(21,893.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 667.

FRED LIGHT, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

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1 Pleas in the Circuit Court of the United States for the District of Colorado, Sitting at Denver.

Be it remembered, that heretofore, and on, to-wit, the seventh day of April, A. D. 1908, came The United States of America, by Ernest Knaebel, Esquire, special assistant to the Attorney General, its solicitor, and filed in said court its bill of complaint against Fred Light.

And said bill of complaint is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Eighth Judicial Circuit and the District of Colorado.

In Equity.

Bill of Complaint.

To the Honorable the Judges of the Circuit Court of the United States for the District of Colorado:

Charles J. Bonaparte, Attorney General of the United States, brings this bill for and on behalf of the United States of America, complainant herein, against Fred Light, a citizen and resident of the state and district of Colorado.

And thereupon your orator alleges and shows unto your Honors:

2 First. On August 25, 1905, the President of the United States, by his proclamation duly made and issued on that day, did, by virtue of, and in accordance with the authority conferred upon him by Sec. 24 of the Act of Congress approved March 3, 1891, entitled "An Act to Repeal Timber Culture Laws and for other Purposes" (26 Stat. 1095), reserve from entry or settlement and set apart as a public reservation, to be known as the Holy Cross Forest Reserve, a large body of the public lands of the complainant, situate, lying and being within the limits of the state and district of Colorado, which body of lands, by force of the said proclamation, so authorized and so reserving the same, has ever since the date of the said proclamation constituted and been, and now constitutes and is a public forest reservation of the complainant set aside for and devoted to the effectuation of its laws and policy touching the preservation and use of the national forests, and which reservation, since the creation thereof, as aforesaid, has been and now is, by virtue of the laws of the complainant, subject to the administrative authority and control of its Secretary of Agriculture.

For a full description of the bounds of the said reservation, should such become material to consider in the progress of this cause, your orator requests leave to refer to the said proclamation wherein the description is fully set forth.

Second. The Secretary of Agriculture, in fulfilment of the
3 duties, and in pursuance of the authority devolving upon him
under the laws of the complainant, has from time to time made, adopted, revised and publicly promulgated reasonable rules and regulations to insure the objects of the national forest reservations—including the said Holy Cross Reserve—to-wit, to regulate their occupancy and use, and to preserve the forests thereon from destruction. Such rules and regulations were so adopted and promulgated by him on June 13, 1905, and twice again, to-wit, on June 12, 1906, and June 3, 1907, in revised forms with certain changes and additions not material to be expressly mentioned here.

Third. The Secretary of Agriculture, in the exercise of his lawful authority and in fulfilment of his lawful duties, has caused to be investigated the effect of excessive grazing of cattle in such forest reservations, and has found and determined that the same is detrimental not only to the best use of such reservations as aids to the livestock industry of the country, but also to the proper protection and perpetuation of the forests sought by the complainant to be protected, propagated and maintained thereon; and, accordingly now and at all times since before the creation of the said Holy Cross Reserve, it has been provided in and by the said regulations, among other things, that the number of stock (including cattle) which may be allowed to graze on any such reservation shall be pre-
scribed each year by the Secretary of Agriculture, that, with
4 certain exceptions expressed in Regulation 42, hereinafter
set out, no person owning or controlling cattle shall cause or allow them to graze within such reservation, without having first secured, through the Department of Agriculture, a permit therefor; that each such reservation shall be divided into grazing districts or areas, and that permits for not more stock in the aggregate than the maximum number so prescribed shall be granted to those who apply for them and comply with the said rules and regulations, according to a plan of equitable apportionment among applicants, and that cattle for which permits are so granted shall be assigned to and confined within different grazing districts, in such wise as to meet the convenience of such licensees, and prevent over-grazing in any portion of the reservation.

Among the said regulations of June 3, 1907, all of which are not and since their adoption have been, in full force and effect over national forest reservations generally, and over the Holy Cross Reserve specifically, are the following, to-wit:

REGULATION 39. Whenever any live-stock association whose membership includes a majority of the owners of any class of live-stock using a National Forest or portion thereof shall appoint a committee, an agreement on the part of which shall be binding upon the association, such committee, upon application to the Forester, may be recognized as an advisory board for the association, and shall then be entitled to receive notice of proposed action and have an opportunity to be heard by the local forest officer in reference to

increase or decrease in the number of stock to be allowed for
5 any year, the division of the range between different classes of stock or their owners, or the adoption of special rules to meet local conditions.

REGULATION 40. The Secretary of Agriculture will prescribe each year the number of stock to be allowed in each National Forest. The period during which grazing will be allowed will be determined by the Forester. The supervisor will issue grazing permits in accordance with the instructions of the Forester.

REGULATION 41. National Forests in which grazing is allowed will be divided into districts approved by the Forester, who will determine the kind of stock to be grazed in each district. The supervisor will make such range divisions among applicants for the grazing permits as appear most equitable and for the best interest of the National Forest and its users. When required for the protection of camping places, lakes and streams, roads and trails, etc., or of areas which are to be reforested, the supervisor may exclude stock from specified areas for such period of time as is necessary. Stock will be excluded from areas where they will destroy young growth or will prevent reproduction.

REGULATION 42. All persons must secure permits before grazing any stock in a National Forest, except for the few head in actual use by prospectors, campers, and travelers, or which are used in connection with business of the National Forests, and milch or work animals not exceeding a total of ten head owned and in use by bona fide settlers residing in or near a National Forest, which require no permit.

REGULATION 43. Permits will be granted only for the exclusive use and benefit of the owners of the stock and will be forfeited if sold or transferred in any manner or for any consideration. Speculation in the use of grazing permits will not be allowed, and permits will be refused or canceled for intentional false statement of the number of stock owned.

REGULATION 44. The supervisor will set and give public
6 notice of a date each year on or before which all applications for grazing permits must be presented to him. Permits may be refused to persons who do not file their applications within the required limit, unless satisfactory reasons are given.

REGULATION 45. Grazing applications must not cover more stock than the applicant desires to graze in the National Forest, and must show the marks and brands of the stock, the portion of the National Forest or district in which pasture is desired, and the grazing period.

REGULATION 46. Whenever there is a dispute between grazing applicants for the same area, the supervisor will notify them to appear before him at a stated time and place, to make a statement of their claims. After all evidence has been presented the supervisor will decide who shall be granted permits, and will forthwith notify each party to the dispute of his decision and his reasons therefor, which will be final unless written notice of appeal to the Forester is given him within ten days thereafter. Appeal will avail only in case of error.

REGULATION 47. Persons owning cattle and horses which regularly graze on ranges located along the boundary line and only partially included within a National Forest may be granted permits for such portion of their stock as the circumstances appear to justify, but may be required to herd or so handle their stock as to prevent trespassing by that portion for which a permit is not granted, and to sign supplemental agreement to that effect.

REGULATION 51. When an owner who has a permit is ready to drive in his stock he must notify the supervisor, by mail or otherwise, stating the number to be driven in; he must also notify the supervisor when the stock is removed. If called upon to do so, he must provide for having his stock counted before entering the National Forest, or at any time afterwards when the number of stock appears to be greater than the number covered by permit. Whenever any stock is removed before the expiration of the permit, it can be replaced by other stock to fill out the number covered
7 by permit if the nearest forest officer is notified of such action at once. The owners of stock which is kept under herd upon the National Forests will be furnished with cards for the identification of their herders by Forest Officers.

REGULATION 57. Whenever an injury is being done the National Forest by reason of improper handling of the stock, the owner must comply with the orders of the Forest officers or the permit will be canceled and the stock removed. The grazing of stock upon a closed area or upon range not allowed by the permit will constitute a trespass, and the owner of the stock will be held liable for damages.

REGULATION 60. All stock which is grazed under permit in or allowed to cross any National Forest will be required to conform to the quarantine regulations of the Bureau of Animal Industry, U. S. Department of Agriculture, and all live-stock laws of the state or territory in which the National Forest is located.

REGULATION 63. All forest officers will cooperate with state or territorial officials, so far as they can without undue interference with their regular forest work, to enforce local laws for the protection of game and stock. When authorized to do so by the proper state officers, they will, without additional pay, except such bounties and fees as are offered by associations, act as game wardens and stock inspectors with full power to enforce the local laws. If not so authorized, they will promptly inform the state officials of all vioations discovered.

And your orator further avers, that now, and ever since the creation of the said Holy Cross Reserve, it is, and has continuously been forbidden by the reules and regulations of the Secretary of Agriculture, and in violation of the laws of the complainant, for any person to graze or permit to graze upon that reserve, or any part
8 thereof, any cattle owned or controlled by him, without having first secured an express permit therefor, from or under authority by the Secretary of Agriculture, save only as to such limited numbers and special classes of stock defined in the exceptions expressed in regulation number 42, as above set forth.

Fourth. Since a time long anterior to the creation of the said Holy

Cross Reserve, the defendant, Fred Light, has been engaged, without interruption, in the business of buying, breeding rai/ing and marketing cattle at a certain ranch, in the county of Pitkin, in said state and district, in township 9 south, range 86 west of the 6th principal meridian.

The said ranch consists of a track of land comprising some five hundred and forty acres, more or less, title to which was derived through entries made and patents issued, under the general land laws of the United States at times long antedating the said reservation, which titles, as your orator is informed by the defendant, are now held by him. The said ranch is situated approximately two and one-half miles to the east, and five miles to the north of the said Holy Cross Reserve, where the bound-ry of the latter forms a reentrant rectangle. A stream, commonly called South Sopris Creek, flows out of said reserve and passes in a northeasterly court-
through the said ranch, and beyond. The vacant public,
9 unreserved lands of the complainant adjoin the boundary of
the said reserve at the said angle, and to the north and east from the apex thereof, and lie between the said reserve and the said ranch, and extend to and beyond the said ranch on the north and east thereof.

Fifth. The herd of the defendant, as maintained by him from year to year since before the creation of the said reserve, numbers, on an average, approximately five hundred *d*attle.

The said ranch is, and since before the creation of the said reserve has been used by the defendant during each winter for harboring and feeding his said cattle, and during each summer for raising the hay and other fodder necessary to feed them there during the ensuing winter. The defendant does not permit the said cattle to remain upon the said ranch during the grazing season commencing in the Spring, but, upon the opening of that season it has been and is his custom each year to drive and exclude them therefrom, and he has never provided, nor attempted to provide, for the pasturage and sustenance of his said stock during the grazing season, means other than those afforded by the grasses and other feed stuffs growing on the said vacant public lands and the said forest reservation; and prior to the creation of the said reserve it was also his custom, each Spring, to cause the said herd, or a large portion thereof, to be driven and herded away from the said ranch, up the
said stream, into what since the date of the said proclamation
10 has been, and now is, a portion of the said Holy Cross Re-
serve, lying south and west of the said ranch; that is to say, a certain portion of the said Holy Cross Reserve, which now constitutes, and throughout the year 1907 did constitute a parcel of one of the duly designated grazing districts thereof and which would be, if the public surveys were extended thereon according to the present system township 9 south, of range 87 west, of the 6th principal meridian, excepting what would be sections 1, 12, 13, 24 and 25 of such township; and did there each year cause and permit them to remain for summer grazing, whereby large numbers of the said herd acquired the habit of seeking and frequenting that locality,

a habit which has ever since continued and now exists, because of the unlawful practices of the defendant herein set forth, and the continued grazing of the said cattle in the same locality of the said reserve, as hereinafter shown. The cattle of the defendant mentioned and referred to in this bill are not and have not been, in whole or in part, of the character or classes excepted by the said regulation No. 42.

Sixth. During the summer grazing season of the year 1905 and 1906, to-wit; from about April 15th to about November 15th in each of those years, the defendant continued so to use and to cause and permit his cattle to graze upon the said lands of the said Holy Cross Reserve in said township 9, together with the aforesaid unreserved and vacant public lands of the complainant, and such use
11 was, in the year 1905, after the 25th of August thereof, under the license, authority and permission of, and throughout the said grazing season of the year 1906, under a permit in writing duly granted by authority of the Secretary of Agriculture; and the defendant, in the year 1906, did apply for and receive such permit in writing.

Seventh. Further complaining, your orator alleges and shows unto your honors, that afterwards, and at some time in the Spring of the year 1907, and prior to the 1st of June of that year, the defendant, though well knowing the existence and boundaries of the said reservation, and though thoroughly informed of and well knowing the provisions of the said rules and regulations which forbade that cattle be caused or allowed to graze within the said reservation without a license and permit of the character and authority hereinbefore mentioned, deliberately and intentionally turned a large number, to-wit, four hundred, of his cattle loose upon the said unreserved public lands of the complainant, at a certain gate opening out of the said ranch on the northerly side thereof, and wrongfully and unlawfully and knowingly, and without having secured or intending to apply for any permit or authority therefor from or authorized by the complainant or its Secretary of Agriculture, and in intentional disregard and defiance of the said rules and regulations, permitted the said cattle to go, in the same manner as the same herd had become
12 accustomed in previous years to go as aforesaid, directly from the said unreserved lands of the complainant into and upon the aforesaid portion of the said Holy Cross Reserve heretofore described as lying in said township 9, and to feed, graze and otherwise trespass thereon, there being then and now no fence separating the said reservation from the said unreserved public lands, as the defendant at all times in this bill mentioned well knew.

Eighth. And your orator avers that the defendant, when he turned his said cattle loose, as described in the next preceding paragraph of this bill, well knew that by reason of the topography of the land there and the superiority of the grasses and other fodder thereon, due to the limitation of the number of cattle allowed by the complainant to graze thereon, as well as by reason of the aforesaid habit of the herd, and their tendency to follow up the said stream, which then afforded the only water immediately and con-

veniently available for their consumption, the said cattle would naturally go, as they did in fact go, into the said reserve and feed and graze thereon, and he then expected and knew that such would be the result of his said liberation of the cattle without supervision or control, and took no precautions and did nothing whatever to prevent their aforesaid entry and trespass upon the said reservation,

13 and your orator alleges that the defendant, by liberating the said cattle in the manner and under the circumstances aforesaid, and with the knowledge aforesaid, and by knowingly and wrongfully permitting them to enter and trespass upon the said reservation, as aforesaid, wrongfully and intentionally caused the said cattle to enter the said reservation and commit the said trespass, in breach of your orator's property and administrative rights.

Ninth. Notwithstanding that the defendant was duly and repeatedly requested and notified by the proper officers and agents of the complainant's forest service, to remove his said cattle from the said reservation, he wrongfully and unlawfully failed and expressly refused so to do, but persisted in knowingly permitting the cattle so trespassing to remain within the said reservation at and near the portion thereof last above specified, throughout the grazing season of the year 1907, for the purpose of feeding and grazing thereon, in violation of the said regulations, without having any license, permit, consent or other authority from or under the complainant, and in utter disregard of its rights and laws.

Tenth. The said defendant threatens and intends, and has repeatedly and at divers times and places, openly as well as privately, stated, that it is his intention and purpose to disregard the said rules

14 and regulations, and without securing or applying for any permit or license from or under the authority of the complainant, to allow, and, in the same manner hereinbefore alleged, to cause, his said cattle to enter, trespass, feed and graze upon the complainant's said forest reservation during the present and ensuing years, in defiance of the laws and policy of the complainant concerning the preservation, use and management of the said reservation, and your orator avers that, unless restrained therefrom by the injunctive process of this Honorable Court, the defendant will carry out his said threats and intention, and repeat during each successive summer grazing season, from day to day and from year to year, the wrongs and injuries to the complainant hereinbefore described, to the permanent and irreparable damage and injury of the said reservation, and of the objects and purposes for which it was created.

Your orator avers that the aforesaid wrongful conduct of the defendant and the wrongful course which he intends, and so openly threatens to pursue as aforesaid, involve repeated, persistent, long-continuing and damaging trespasses, for the redress and prevention whereof no adequate remedy exists at the common law, and constitute and are a public nuisance, injurious and unjust to the complainant and to its many citizens who, through due and willing compliance with the said regulations, use and will use the said reservation, and particularly the said grazing district, for the grazing of

their stock legitimately, creating uncertainty and exciting
15 discontent in the minds of such persons, and greatly interfering with the due administration of the said reservation, and other similar reservations, under the complainant's laws, and tending ultimately to destroy such due administration and to frustrate the plans and policy by which the creation of such reservations was actuated.

In consideration whereof, and for as much as the complainant is without full and adequate remedy in the premises save in a court of equity, and to the end that the said defendant, Fred Light, may make full, true and direct answer to all and singular the matters and things hereinbefore set out, as fully as if he had been particularly interrogated thereunto, but not under oath, an answer under oath being hereby expressly waived; and to the end that the defendant, Fred Light, and all and singular his servants, agents, representatives and employés may be enjoined, ordered, adjudged and decreed absolutely and perpetually to cease and refrain from continuing or repeating in whole or in part the aforesaid wrongs and injuries, and from causing or permitting any cattle owned by him, or subject to his control, to enter or remain within the bounds of the said Holy Cross Forest Reserve, without the permission, permit and license of the complainant therefor, first duly had and obtained by due compliance with the aforesaid regulations of the complainant's Secretary of Agriculture, and to the further end that the
16 said defendant may be commanded, adjudged and enjoined to remove from the said reservation all cattle owned by him or subject to his control, which are or hereafter may be found within the said reservation in the absence of such permission, permit and license aforesaid; and further, that the complainant may have such other and further relief in the premises as to this court may seem just and equitable, together with reasonable costs, etc.

May it please your honors to grant unto the complainant a writ of subpœna, to be directed to the said Fred Light, thereby commanding him at a certain time and under a certain penalty therein to be limited, personally to appear before this Honorable Court and then and there full, true and direct answer make to all and singular the premises, and to stand, perform, and abide by such order, direction and decree as may be made against him in the premises, as shall seem meet and agreeable to equity.

And your orator will ever pray.

CHARLES J. BONAPARTE,
Attorney General.
ERNEST KNAEBEL,
Special Ass't to the Att'y General.

(Endorsed:) No. 5153. In the U. S. Circuit Court. For the eighth Judicial Circuit, and the District of Colorado. In Equity. The United States of America, vs. Fred Light. Bill of Complaint. Filed Apr. 7, 1908, Charles W. Bishop, Clerk. Ernest
17 Knaebel, Sp'l Assistant to the Att'y Gen'l.

Ninety-third Day, November Term, Tuesday, April 14th, A. D. 1908.

Present: The Honorable Robert E. Lewis, District Judge, and other officers as noted on the twenty-fifth day of February, A. D. 1908.

In Chancery. 5153.

THE UNITED STATES OF AMERICA
vs.
FRED LIGHT.

Bill for an Injunction and for Other Relief.

At this day comes Ethelbert Ward, Esquire, a solicitor of this court, and files and enters herein his appearance and the appearance of Ralph W. McCrillis, Esquire, as solicitor for and on behalf of the respondent.

In the Circuit Court of the United States for the Eighth Judicial Circuit in and for the District of Colorado.

In Equity. No. 5153.

THE UNITED STATES OF AMERICA, Complainant.
vs.
FRED LIGHT, Defendant.

The Demurrer of Fred Light, Defendant, to the Bill of Complaint of the Above Named Complainant Herein.

This defendant, Fred Light, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint herein contained to be true, in such manner and form as the same are therein set forth and alleged, does demur to said bill and for cause of demurrer shows:

18 That said bill of complaint does not state any matter in equity entitling the complainant to the relief prayed for, nor are the facts, stated in said bill sufficient to entitle the complainant to any relief against this defendant.

Wherefore and for divers other errors and imperfections appearing in said bill and for divers other good causes for demurrer appearing on said bill, this defendant demurs thereto and he prays the judgment of this honorable court whether he shall be compelled to make any answer to said bill or any part thereof; and defendant humbly prays this honorable court to be hence dismissed with his reasonable costs in this behalf sustained.

ETHELBERT WARD,
RALPH W. McCRILLIS,
Solicitors for Defendant.

We, Ethelbert Ward and Ralph W. McCrillis, solicitors for the defendant in the above and foregoing demurrer in the above entitled cause, do hereby certify that the foregoing demurrer, in our opinion, is well founded in law.

ETHELBERT WARD.
RALPH W. McCRILLIS.

UNITED STATES OF AMERICA,
District of Colorado, County of Pitkin, ss:

Fred Light, being duly sworn, deposes and says, that he is the defendant in the above entitled cause and that the foregoing
19 demurrer is not interposed for delay.

FRED LIGHT.

Subscribed and sworn to before me this 13 day of April, A. D. 1908.
Witness my hand and *and* notarial seal.
My commission expires Feb. 11, 1911.

MANFORD W. SMITH,
[NOTARIAL SEAL.] *Notary Public.*

(Endorsed:) No. 5153. In the U. S. Circuit Court for the Eighth Judicial Circuit and the district of Colorado. In Equity. The United States of America vs. Fred Light. Demurrer to Bill of Complaint. Filed Apr. 14, 1908, Charles W. Bishop, Clerk. Ethelbert Ward, Ralph W. McCrillis, Solicitors for Defendant.

One Hundred and Second Day, November Term, Wednesday April 29th, A. D. 1908.

Present: The Honorable Robert E. Lewis, District Judge, and other officers as noted on the twenty-fifth day of February, A. D. 1908.

In Chancery. 5153.

THE UNITED STATES OF AMERICA
vs.
FRED LIGHT.

Bill for an Injunction and for Other Relief.

This cause coming on now to be heard on the demurrer to the bill of complaint, is argued by counsel, Ernest Knaebel,
20 Esquire, special assistant to the Attorney General, appearing as solicitor for the complainant, and Etherbert Ward, Esquire, and Ralph W. McCrillis, Esquire, appearing as solicitors for the respondent.

And thereupon, on consideration thereof, it is ordered by the court that the said demurrer be, and the same is hereby overruled.

One Hundred Fourth Day, November Term, Saturday, May 2nd, A. D. 1908.

Present: The Honorable Robert E. Lewis, District Judge, and other officers as noted on the twenty-fifth day of February, A. D. 1908.

In Chancery. 5153.

THE UNITED STATES OF AMERICA
vs.
FRED LIGHT.

Bill for an Injunction and for Other Relief.

This cause coming on now to be heard, Ethelbert Ward, Esquire, appearing as solicitor for the respondent;

And thereupon, on his motion, it is ordered by the court, that the time within which the respondent shall answer the bill of complaint herein be, and the same is hereby, enlarged and extended to and including the eighteenth day of May, A. D. 1908.

21 In the Circuit Court of the United States for the Eighth Judicial Circuit and the District of Colorado.

In Equity. No. 5153.

THE UNITED STATES OF AMERICA, Complainant,
vs.
FRED LIGHT, Defendant.

The Answer of Fred Light, the Defendant, to the Bill of Complaint of the United States of America, the Complainant:

This defendant, now and all times hereinafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, comes and answers thereto, or to so much thereof as he is advised it is material or necessary for him to make answer to, and says:

First. The defendant admits that on August 25, 1905, the President of The United States made and issued the proclamation mentioned in paragraph first of the bill of complaint herein and that said proclamation purports to have been made and issued in accordance with the authority conferred upon the said President by section 24 of the Act of Congress approved March 3, 1891,
22 in said bill of complaint referred to, and he believes that said proclamation is of the tenor and effect in said bill of complaint alleged but for greater certainty he begs leave to refer to said proclamation upon the final hearing of this case.

The defendant admits that ever since the date of said proclama-

tion the premises thereinmentioned have constituted and been and at the date of the filing of the bill of complaint herein constituted *and* were a public forest reservation of the complainant set aside for and devoted to the effectuation of what complainant claims to be its laws and policy touching the preservation and use of the national forests, but defendant denies that said reservation has been or now is, by virtue of the laws of the complainant or otherwise, subject to the administrative authority or control of its Secretary of Agriculture; but on the contrary defendant submits that by the provisions of the laws of complainant relative to forest reserves, the jurisdiction of the State of Colorado over the said Holy Cross Reserve, both civil and criminal, is expressly admitted, and it is provided that said jurisdiction shall not be effected or changed by reason of the existence of such reservations except so far as the punishment of offences against the United States therein is concerned and that the said state of Colorado shall not, by reason of the
23 establishment of said reserve, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of said state, and that the laws of complainant further expressly provide that the officials of the forest service designated by the Secretary of Agriculture shall in all ways that are practicable, aid in the enforcement of the laws of the state with reference to stock. And the defendant is advised and humble submits to this Honorable Court that the proclamation of the President of the United States purporting to set aside the so-called Holy Cross Forest Reserve, without the consent of the state of Colorado, is without warrant of law and in violation of the Constitution of the United States and is wholly void and without any force or effect against this defendant.

Second. Defendant admits that the Secretary of Agriculture has from time to time and under the dates mentioned in the second paragraph of the bill, adopted, revised and publicly promulgated certain rules and regulations purporting to insure the object of the national forest reservations, including the said Holy Cross Reserve, to regulate their occupancy and use, and to preserve the forest thereon from destruction, and that said rules and regulations purport to have been adopted, revised, and promulgated by said Secretary in fulfillment of the duties and in pursuance of the
24 authority claimed by him to have devolved upon him under the laws of the complainant.

Third. Defendant admits that the Secretary of Agriculture has caused to be investigated the effect of excessive grazing of cattle on forest reservations as in the bill alleged, and that, as a result of said investigation he has determined that excessive grazing of cattle is detrimental to said forest reservations.

Defendant admits that among the rules and regulations adopted and promulgated by said Secretary of Agriculture are the regulations numbered 39 to 47, both inclusive, 51-57-60 and 63, recited and alleged in paragraph third of the bill of complaint herein, and that said regulations are of the tenor and effect in said paragraph of said bill alleged, but for greater certainty he begs leave to refer to said rules and regulations and the whole thereof upon the final

hearing of this case. But defendant denies that said rules and regulations were or are enacted or promulgated by the Secretary of Agriculture in the exercise of any lawful authority or otherwise, or in the fulfillment of his official duties or otherwise. And defendant is advised and humbly submits to this Honorable Court that said rules are not reasonable or such as shall insure the objects of the National Forest Reservations. And defendant further humbly submits to this Honorable Court that said rules and regu-
25 lations are an unconstitutional, unlawful and unwarranted interference with the range, grazing and fence laws of the state of Colorado enacted and enforced in the exercise of the police powers of the said state, and that said rules and regulations are wholly void and are without force or effect against this defendant.

Fourth. The defendant admits each and every allegation contained in the fourth paragraph of the bill of complaint; except that he alleges the facts to be that his ranch also embraces parts of Sections thirty-two (32) and thirty-three (33) in township eight (8) south of range eighty-six (86) west; and that for many years last past his dwelling house, barns, corrals and principal feed lots have been and are now situated on said section thirty-two (32).

Fifth. As to the allegations of the fifth paragraph of said bill of complaint this defendant denies that since the year 1906 he has in any manner relied upon the grasses or other growths upon said forest reservation for feed for his cattle or any part of them; denies that any part of this cattle owned by him in 1907 and 1908 have ever acquired any habit of seeking or frequenting any portion of said forest reservation through any act or acts of defendant or at all; denies any unlawful practices on his part; and denies
26 any continued grazing of cattle upon said reservation; but defendant admits each and every other allegation contained in the fifth paragraph of said bill of complaint.

Sixth. The defendant admits each and every allegation contained in the sixth paragraph of said bill of complaint.

Seventh. The defendant admits that in the Spring of 1907 he intentionally and knowingly turned about four hundred of his cattle loose upon the open and unreserved public lands of complainant through a gate on the northerly side of his ranch, without having secured or intending to apply for a permit or authority from the complainant or its Secretary of Agriculture to graze upon the Holy Cross Forest Reserve, and submits to this Honorable Court that he had a right to do so; and defendant admits that he at all times knew that there was then and now no fence separating said Holy Cross Forest Reserve from said unreserved public lands; but defendant denies all and every of the conclusions of law contained in said seventh paragraph of said bill of complaint, and especially denies that any of his acts therein alleged were to his knowledge wrongful or unlawful or that they were in fact wrongful or unlawful; denies that his said acts were contrary to or in defiance of said rules and regulations; denies that more than one-fourth of said cattle were of the same herd he had the year previous; denies that

any of said cattle had been accustomed in previous years
27 or at all to go upon any part of said reservation; denies that he caused or intended or intentionally permitted any of said herd to go directly or otherwise from said unreserved lands to or upon any portion of said Holy Cross Forest Reserve.

Eighth. Defendant denies that when he turned his cattle loose upon the unreserved public lands of complainant, as alleged in paragraph seven of the complainant's bill, he well knew, or that he at all knew, that for the reasons alleged in paragraph eight of said bill or for any reason, said cattle or any appreciable number of said cattle would naturally or otherwise go into said reserve and feed or graze thereon; he denies that there were or are superior grasses or other fodder growing upon said reserve; he denies that his herd or any part thereof had any habit of going upon said reserve; he denies that there was any stream with the only water immediately or conveniently available for their consumption which said cattle could reach and follow up into said reserve; he denies that the only available water for the cattle on said range in the vicinity of his ranch was or is found in East Sopris Creek; and he denies that he then expected and knew or expected or knew that such would be the result of his said liberation of said cattle wtihout supervision or control;
28 but he admits that he took no precaution and did nothing whatever to prevent the entry of said cattle upon the said reservation; and he admits that about one hundred of his cattle during the Summer of 1907 did wander and stray upon said reserve; but he denies that by liberating the said cattle in the manner and under the circumstances in said bill of complaint alleged or otherwise, he, in fact, or in law, knowingly or wrongfully or intentionally or at all caused the said cattle or any part thereof to enter the said reservation; and he submits unto this Honorable Court that when said cattle or any part thereof, in fact did during said Summer of 1907 enter upon said reservation and feed and graze thereon, as in said bill of complaint alleged, such acts did not constitute a trespass upon said unfenced reservation, or a breach of complainant's property or administrative rights therein, or otherwise or at all.

Ninth. Defendant admits the facts alleged in paragraph nine of the bill of complaint, except he denies that he permitted his said cattle to remain on said reservation for the purpose of feeding and grazing thereon, and he denies each and every conclusion of law therein alleged and in particular he denies that any of his acts therein alleged were to his knowledge or in fact or in law, wrongful or unlawful or in disregard of complainant's rights or laws.

Tenth. This defendant denies that he ever threatened or
29 intends, or that he now threatens or intends, or that he has at any time or place, openly or privately, stated that it is his intention or purpose in any manner to cause his said cattle to enter, trespass, feed or graze upon the complainant's said forest reservation during the present year or at any time either in defiance of complainant's laws or policy or rules and regulations or otherwise or at all; but he admits that it is his intention hereafter as heretofore to turn his cattle out upon the unreserved public lands of the

complainant adjoining his said ranch to the northeast thereof without securing or applying for any permit or license from or under the authority of the complainant for said cattle to graze upon the so-called Holy Cross Reserve; and he denies that if the said cattle or any part of them, on account of their straying proclivities, shall wander and go into and graze on the said forest reserve, any damage or injury, permanent, irreparable or otherwise, will in fact result to the complainant; and defendant submits that even if any such damage or injury does result to the complainant, said complainant is and will be without remedy therefor against this defendant, at law or in equity, so long as complainant fails to fence said Holy Cross Forest Reserve as provided by the laws of the state of Colorado.

And defendant further answering says:

I.

30 That in the year 1880 defendant located a homestead on East Sopris Creek, in Pitkin County, Colorado, hereinafter more particularly described, where he now lives, and during twenty-eight years last past has supported himself and his family by raising, buying and selling cattle; which cattle he feeds during the winter and early spring upon hay raised on his ranch and during the summer and fall permits them to graze upon the unenclosed and unreserved public domain of the United States in the neighborhood of his ranch.

II.

The defendant owns in his own right and is in possession of and controls, as his own, about eight-hundred and eighty (880) acres of land in Pitkin County, Colorado, described as follows: The southeast quarter of the northwest quarter, the east half of the southwest quarter, the southwest quarter of the northeast quarter, and the southeast quarter of section thirty-two (32); and the west half of the southwest quarter, and the southeast quarter of the southwest quarter of section thirty-three (33); all being in township eight (8) south of range eighty-six (86) west; and the following lands situated in township nine (9) south of range eighty-six (86) west; the northeast quarter, the southeast quarter of the northwest quarter, the east half of the southwest quarter, and the west half of the south-
31 east quarter of section five (5); and the northwest quarter of the northeast quarter, and the northeast quarter of the northwest quarter of section eight (8). That all of these lands are and have been for more than three years last past enclosed by fences, except a narrow strip lying on the west side of his land in section thirty-two (32), township eight (8) south of range eighty-six (86) west, and about sixty (60) acres in the northeasternly part of his land in said sections thirty-two (32) and thirty-three (33) in township eight (8) south of range eighty-six (86) west; the location of which lands and the exterior fences thereupon are approximately designated on the map hereto attached, marked Exhibit "A" and made a part of this answer. And that defendant's dwelling house,

barns, corrals and principal feed lots are all now and have been for many years past situated in the southeast quarter of said section thirty-two (32), township eight (8) south of range eighty-six (86) west.

III.

That defendant is informed and believes that those portions of the Holy Cross Forest Reserve nearest to his said ranch comprise all of township ten (10) south of range eighty-six (86) west and township nine (9) south of range eighty-seven (87) west, except the eastern tier of sections of said township nine (9), to-wit: what would be sections one (1), twelve (12), thirteen (13), twenty-
32 four (24), twenty-five (25), and thirty-six (36). That the boundaries of said reserve are approximately marked on the said map hereto attached. But defendant believes that no official survey or marking of said reserve has been made. That said reserve is not fenced with a statutory fence or at all, as is required by the laws of the state of Colorado, to protect said reserve against cattle at large.

IV

That to the east and southeast of defendant's ranch are other ranches which are now and have been for more than two years last past, under fence, extending east three or four miles to Snowmass Creek and beyond and extending south and southeast about six miles to the northern limits of said reserve; and defendant's cattle do not enter any portion of the said reserve through the territory east, southeast and south of his said ranch.

V

That adjoining defendant's ranch to the southwest is a chain of ranches under fence extending along East Sopris Creek to within a short distance of the place where East Sopris Creek flows out of said reserve near section fourteen (14), township nine (9) south of range eighty-seven (87) west. That there is a continuous line of fences running from defendant's west fence in section thirty-two
33 (32), township eight (8), south of range eighty-six (86) west to within about a mile from where said East Sopris Creek flows from said reserve. That this chain of fences taken in connection with defendant's fence in said section thirty-two (32), run southwesternly for a distance of about four miles approximately parallel to said creek at a distance of about one-quarter of a mile, and prevent access to said creek by cattle upon the unfenced unreserved lands between said creek and said reserve. That the approximate location of said fences is shown on the map hereto attached.

VI

That northeast of said defendant's ranch is a large body of unenclosed and unreserved public lands of the United States situate in township eight (8) south of range eighty-six (86) west, extend-

ing to Snowmass Creek on the east, to Roaring Fork River on the north and East Sopris Creek on the west, which now and for many years past has constituted the Spring range of defendant's cattle. That said territory slopes gradually to the south and southwest, and upon which territory, owing to its southern exposure and sheltered position, the grasses and herbage appear many weeks earlier in the Spring than upon the country lying to the west and southwest in the direction of said reserve. That said Spring Range is well supplied with water until the middle of Summer so that said
34 cattle are not compelled to go to East Sopris Creek for water. And that for many years past and now, it has been and is the custom of defendant about the first day of April of each year to open a gate in the northeasterly line of defendant's fence at a point situated in the west part of the northwest quarter of the southeast quarter of section thirty-two (32), township eight (8) south of range eighty-six (86) west, and to turn his cattle out through said gate upon the unfenced portion of defendant's lands in the northeastern part of said section thirty-two (32) with the intention that they should go upon the unreserved open public domain lying northeast thereof constituting said defendant's said Spring range and which contains an ample supply of grass and water for defendant's cattle and all other cattle that range thereon during the Spring and early Summer; and defendant submits to this Honorable Court he had and has a right so to do under the laws of the United States and the state of Colorado.

VII.

That prior to the year 1907 it had been the custom of defendant in the early summer of each year to drive his said cattle from off his said Spring range southwesterly from his said ranch upon what is now a part of said Holy Cross Forest Reserve in township nine (9) south of range eighty-seven (87) west, and to keep his said
35 cattle away from the immediate vicinity of his home ranch, not on account of the superior grasses or feed or water upon said territory which is now said reserve, but in order to preserve the grass on the lands near his said ranch for late Fall and early Winter grazing, where said cattle may be within easy reach of defendant in case of storms. That in order to keep his cattle away from his said ranch and upon said territory which is now a part of said reserve, the defendant has been often compelled to make several drivings during each summer. But that since the year 1906 the defendant has not turned or driven his cattle upon said reserve or any part thereof, and has not turned out or driven his cattle in the direction of said reserve or any part thereof; but on the contrary during said years 1907 and 1908, on about the first of April of each year, has turned his cattle out as aforesaid at a place on his ranch farthe*r*est removed from said reserve, to-wit, at said gate in the east part of said section thirty-two (32), upon his own unfenced lands and in a direction leading away from said reserve and into said Spring Range.

VIII.

That to the west and northwest of defendant's said Spring range lies an undulating territory bounded on the south by mountains sloping steeply to the north with sides and tops covered with dense oak scrub, on the nor*t*y by Roaring Fork River, and on the
36 west by Crystal River; all of which territory with the exception of some narrow cultivated strips along the rivers, is open and unreserved public domain of the United States. That this last described territory, together with defendant's said Spring range, has been during the years 1907 and 1908 and is now the usual range of defendant's cattle, and comprises about sixty (60) square miles of unenclosed and unreserved public domain of the United States and contains an ample supply of grass and available water throughout the entire grazing season both for defendant's cattle and all other cattle that have been for two years last past and now are ranged and pastured thereon; and that upon this territory only has it been and is now the desire, purpose and intention of defendant that his said cattle should range.

IX.

That where the north line of defendant's fence crosses East Sopris Creek in the northwest quarter of section thirty-two (32) township eight (8) south of range eighty-six (86) west, there is a mountainous ridge running west and southwest, the top and sides of which are covered with oak scrub, which cattle avoid in the Spring and early Summer. That the west line of defendant's fence in said section thirty-two (32) runs along the southeaster*n*ly exposure of that part of this mountain side running to the southwest, and said
37 fence runs in a southern direction at a considerable distance up the side of the mountain. That the northwestern corner of said defendant's fence is situated on this steep hill side, and that it is difficult for cattle to climb out of the gulch of East Sopris Creek to get around said northwest corner of said fence. That the topography of the land at said crossing is such that cattle crossing East Sopris Creek at or below where defendant's said north fence crosses the same, naturally go down East Sopris Creek, northwesterly towards Carbondale, and not southwesterly towards the said forest reserve. But that in the latter part of May and thereafter some of defendant's cattle do leave said Spring range and climb the hill around the extreme Northwestern corner of defendant's said fence in said northwest quarter of said section thirty-two (32), and range and wander to the southwest along the lines of fences west of East Sopris Creek and enter the said Holy Cross Forest Reserve in the neighborhood of where said East Sopris Creek flows from out of said reserve, at a distance, around the fences, of about five miles from where said gate is situated out of which defendant in April of each year turns his cattle to the northeast for the purpose of having them go on said Spring range, and not upon said reserve. That others of defendant's cattle go northwesterly towards West Sopris Creek, and then stray south and go upon the said reserve in the latter part
38 of May and thereafter. But that in doing so they must necessarily and do traverse a distance of about nine miles

from said gate from which said cattle are turned out by defendant in April. That the elevation of said reserve is so great that snow usually lies upon almost the entire reserve west and southwest of defendant's ranch until after the first of May; and it is not until July that the grazing upon said reserve is good. That no appreciable number of defendant's cattle wander or stray upon said reserve and eat the grasses thereon until the latter part of June, and more than two months after defendant has turned his cattle out upon his said Spring Range northeast of said ranch in a direction away from said reserve. And defendant is advised and humbly submits to this Honorable Court that by the law of the state of Colorado and the Constitution of the United States he is not obliged to prevent his cattle from straying and wandering upon said unfenced forest reserve.

X.

That three hundred (300) of the four hundred (400) head of cattle owned by defendant in 1907, and turned out by him early in April 1907 upon his said Spring range northeast of his ranch, were cattle strange to the country, having been recently b-ought by defendant from a different locality; that the remaining one hundred (100) head were mainly calves and yearlings and had ac-
39 quired no habit of going upon any portion of said forest reserve. That defendant sold practically all of his 1907 herd of cattle in the fall of 1907 and the winter of 1907-8, reserving only a few bulls and breeding cows. That prior to April 1908 he bought about one hundred and seventy-five (175) head of new cattle that are unacquainted with the range around defendant's ranch, and have acquired no habit of going upon any part of said forest reserve. That early in April, 1908, defendant opened his said northeastern gate and permitted his one hundred and seventy-five head of cattle to go northeast upon his said Spring Range; but at the date of the verification of this answer there is not one of said cattle upon any portion of said reserve.

XI.

That since the year 1906 the defendant has never intended or desired nor does he now intend or desire that his cattle should go upon any part of said reserve; and since the year 1906 the defendant has never caused nor does he intend *to* desire to cause his cattle to go upon any part of said reserve.

And further answering the defendant shows to the court that by an Act, approved April 10th, 1885, entitled "An Act Concerning Fences, and to repeal Chapter 39 of the General Statutes of the state of Colorado, entitled Fences", the General Assembly of the state of Colorado defined what should thereafter constitute a lawful
40 fence in said state, and by the second section of said act it was enacted, among other things, that no person or persons should be allowed to recover damages for any injury caused by any animal or animals to any crops or grass or garden products, or other vegetable products, unless his lands, at the time of such trespass or

injury, were enclosed by a legal and sufficient fence, as in said act before described, and defendant further shows to the court that it appears by the bill of complaint herein, and defendant alleges the fact to be, that the lands of the complainant described in said bill of complaint as the Holy Cross Forest Reserve are not nor have they ever been enclosed by any fence, and defendant therefore is advised and insists that the complainant is not entitled to any relief against the defendant touching the matters complained of in its said bill; and this defendant claims the same benefit as if he had pleaded the above statute in this cause.

And this defendant is advised and humbly submits that the complainant has not in its bill of complaint shown any case in equity against this defendant or any matter or thing entitling said complainant to proceed in equity against this defendant, nor is complainant shown in said bill to be entitled to any relief from this Honorable Court; and this defendant accordingly claims the same benefits from this, his answer as if he had pleaded the matters
41 herein stated, or any of them, or as if he had demurred to said bill or to any parts thereof.

And all of the foregoing matters and things set forth in this defendant's answer to said bill of complaint this defendant is ready and willing to aver, maintain and prove as this Honorable Court may direct.

Wherefore, this defendant having fully answered, confessed, traversed and avoided or denied all the matters in the said bill of complaint material to be answered, according to his best knowledge and belief, humbly prays this Honorable Court to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

FRED LIGHT, *Defendant.*

ETHELBERT WARD,
RALPH W. McCRILLIS,
Solicitors for Defendant.

UNITED STATES OF AMERICA,
States of Colorado, County of Pitkin, ss:

Fred Light, of lawful age, being first duly sworn, upon his solemn oath says that he is the defendant named in the foregoing answer subscribed by him, that he has read the same and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated on information and belief and as to those matters he believes it to be true.
42

FRED LIGHT.

Subscribed and sworn to before me this 15th day of May, A. D. 1908.

Witness my hand and notarial seal.

My commission expires the 11th day of Feb., A. D. 1911.

[NOTARIAL SEAL.] MANFORD W. SMITH,
Notary Public.

(Here follows diagram marked p. 43.)

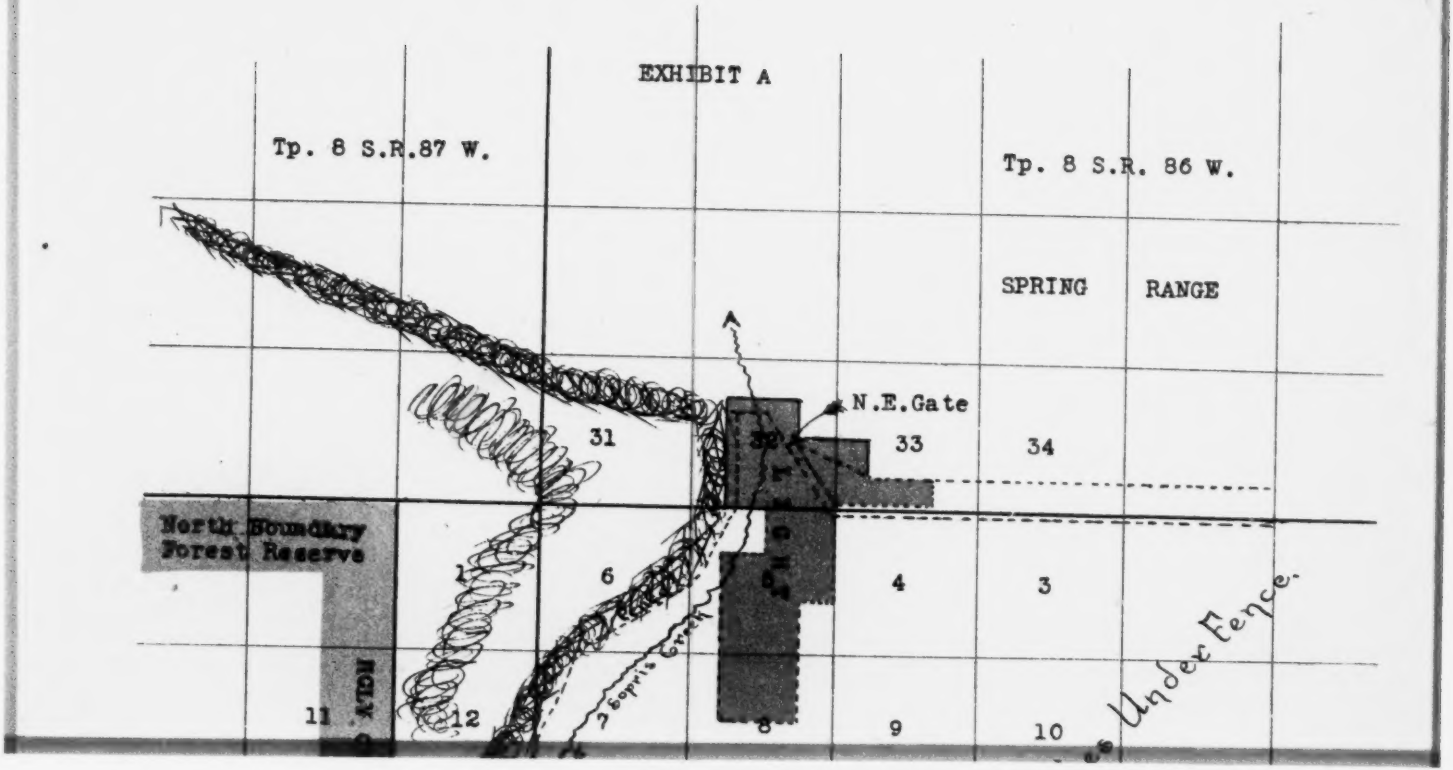
EXHIBIT A
Tp. 8 S.R.87 W.
Tp. 8 S.R. 86 W.
SPRING RANGE
N.E.Gate
North Boundary Forest Reserve
31
32
33
34
1
6
5
4
3
11
12
7
8
9
10
Esprit Creek
Under Fence.

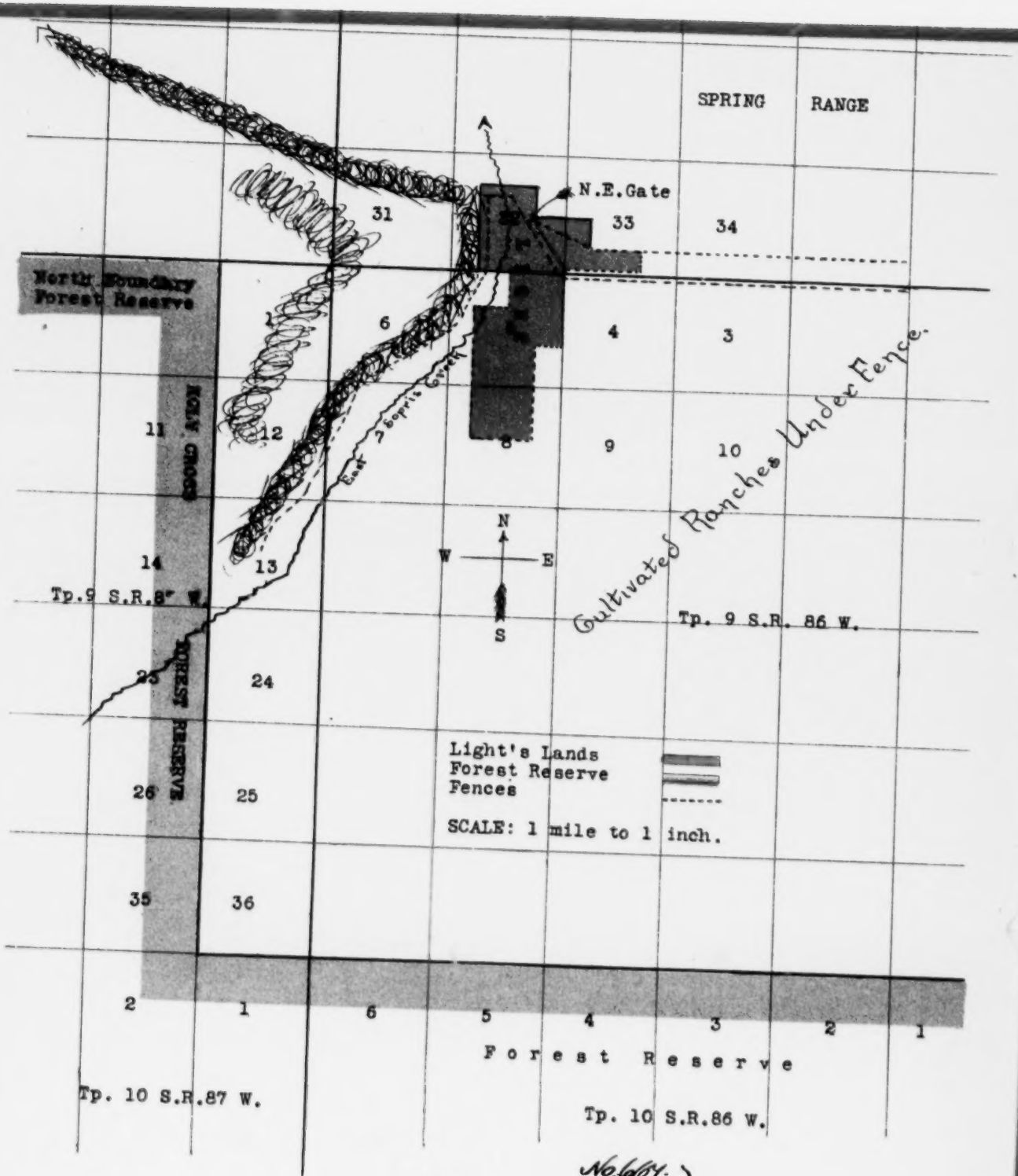

EXHIBIT "A"

No. 667.
Light
v.
U.S.
} p. 43

44 (Endorsed:) No. 5153. In Equity. The United States, Complainant, vs. Fred Light, Defendant. Answer. Filed May 16, 1908, Charles W. Bishop, Clerk. Etherbert Ward, 416 E. & C. Bldg., Denver, Colo. Ralph W. McCrillis, Equitable Bldg., Denver, Colo. Solicitors for defendant.

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the Circuit Court of the United States for the District of Colorado.

In Equity. No. 5153.

UNITED STATES OF AMERICA, Complainant,
vs.
FRED LIGHT, Defendant.

Amendments of Bill of Complaint.

Comes now the United States of America, the complainant above named, by its solicitor, and by leave of court in this behalf first had and obtained, brings these its amendments of its bill of complaint herein against the defendant Fred Light, to-wit:

First. The complainant hereby amends its said bill by striking out from the fifth paragraph thereof the words "up the said stream" where the same appear in the first line of the 7th page of said bill, and by substituting for the words so stricken the word "directly."

Second. The complainant further amends its said bill by
45 amending the 7th paragraph thereof so that the same shall read as follows, to-wit:

Seventh. Further complaining, your orator alleges and shows unto your honors that afterwards, and at some time in the spring of the year 1907, and prior to the first of June of that year, the defendant, though well knowing the existence and boundaries of the said reservation, and though thoroughly informed of and well knowing the provisions of the said rules and regulations which forbade that cattle be caused or allowed to graze within the said reservation without a license and permit of the character and authority hereinbefore mentioned, deliberately and intentionally liberated and drove forth from his said ranch a large number, to-wit, four hundred of his said cattle, and wrongfully and unlawfully and knowingly and without having secured or intending to apply for any permit or authority therefor, from or authorized by the complainant or its Secretary of Agriculture, and in intentional disregard and defiance of the said rules and regulations and of the property and administrative rights of the complainant, caused and permitted the said cattle to go directly from the said ranch of the defendant over intervening, unreserved lands of the complainant, into and upon the aforesaid portion of the said reservation heretofore described as lying in said township 9, and to feed, graze and otherwise trespass thereon, there being then and now no fence separating the said reservation

from the said unreserved public land, as the defendant at all times in this bill mentioned well knew.

Third. The complainant further amends its said bill by amending the 8th paragraph thereof so that the same shall read as follows, to-wit:

Eighth. And your orator avers that the grasses and other fodder growing upon any or all of the unreserved lands upon which
46 cattle when liberated or excluded from the said ranch will or do voluntarily go, without herding and driving, have at all times been and are and will continue to be in each and every year, except in early spring, too poor in quality and too meager in quantity to attract or content or adequately to nourish all or any considerable portion of the number of cattle which the defendant now has and controls and purposes to have and control in the conduct of his said business at and near the said ranch; that the water supply upon and accessible from such unreserved lands has been, is, and will be in each and every year, except in early spring, insufficient for all or any considerable number of such cattle; that, on the other hand, in each and every year beginning in the late spring or early in the month of June, the grazing upon the said reservation near to the said ranch becomes good in quality and abundant in quantity for cattle equal or exceeding in numbers the said herd of the defendant and so continues throughout the grazing season, and water there exists at all times sufficient in quantity and quality and of convenient access, to meet the needs of such or any similar herd. And your orator further shows that there are and at all times herein mentioned have been well worn cattle trails leading from the said ranch and the lands adjacent thereto directly into the said reservation, which trails have been formed in the past by cattle of the defendant and of persons other than the defendant maintaining ranches on said Sopris Creek who each year comply with the said laws and regulations of the complainant and cause or permit their cattle to enter and graze within the said reservation under complainant's license, and that because of the existence of such trails and the relative conditions as to feed and water supply in this paragraph set forth, and of such regular and lawful and duly licensed ingress into the said reservation, by such other cattle—all of which facts are and long have been well known to the defendant—it is and will continue to be, as the defendant well knows, natural and inevitable that all or many of the cattle of the defendant will each year when liberated or driven from the enclosures of his said ranch enter the said reservation soon thereafter and
47 there remain grazing and trespassing throughout the grazing season, even though the defendant should not drive or herd his cattle or any thereof directly to or upon the said reservation, and this result is and will be the more natural and necessary because as the defendant well knows and your orator avers, the topography of the region at and about the said ranch is such as greatly to assist the other operating causes and factors aforesaid, in directing cattle from the said ranch and its vicinity into and upon the said reservation.

The defendant pretends that he did not cause any of his cattle to enter or trespass upon the said reservation in the year 1907, as averred in the seventh paragraph of this bill, in this, that he did not cause such cattle to be directly driven or led thereon, but confined his action to the liberation of such cattle upon the said unreserved lands adjacent to the said ranch; but your orator avers that even though such were the truth, the defendant nevertheless at the time of such liberation well knew that by reason of the facts hereinbefore alleged in this eighth paragraph of this bill, and by reason of the aforesaid habit of the said herd of the defendant, such cattle would naturally and necessarily go, as they did in fact go, into and upon the said reservation and feed, graze and otherwise trespass thereon, and yet defendant took no precautions and did nothing whatever to prevent such an unlawful entry and trespass, but on the contrary desired and intended that the said cattle should enter and trespass upon the said reservation and consume the superior grasses and other herbage thereof, in breach of the complainant's property and administrative rights.

Fourth. The complainant further amends its said bill by striking from the tenth paragraph thereof the words "in the same manner hereinbefore alleged," where the same appear in the first and second lines of the tenth page of said bill.

Wherefore, the complainant prays as before was prayed
48 in the original bill herein; and that the said defendant may answer, but not under oath, such oath being hereby waived, according to the practice of this court, all and singular the matters stated and charged in said original bill of complaint, and not hereby, stricken therefrom, and those hereinbefore stated and charged in these amendments thereof.

ERNEST KNAEBEL,
Special Assistant to United States Attorney, Duly Designated by the Attorney General to Conduct the Prosecution of this Cause, Solicitor for Complainant.

(Endorsed:) No. 5153. U. S. Circuit Court, of Colorado. United States of America, Complainant, vs. Fred Light, Defendant. Amendments of Bill of Complaint. Filed Jul. 6, 1908, Charles W. Bishop, Clerk. Ernest Knaebel, Counselor at Law, Equitable Bldg., Denver, Colo.

Saturday, July 11th, A. D. 1908.

At chambers, before the Honorable Robert E. Lewis, District Judge, the following proceeding was had:

In Chancery. 5153.

THE UNITED STATES OF AMERICA
vs.
FRED LIGHT.

Bill for an Injunction and for Other Relief.

Upon reading the proposed amendments of its bill of complaint heretofore filed by the complainant and the stipulation of
49 the complainant and defendant permitting such amendments, filed herein May 28th, 1908:

It is, on motion of Ernest Kanebel, Esq., complainant's solicitor; Ordered that the said proposed amendments be, and the same hereby are, allowed to be made as amendments to the said bill of complaint.

Thirty-seventh Day, May Term, Tuesday, July 21st, A. D. 1908.

Present: The Honorable Robert E. Lewis, District Judge, and other officers as noted on the fifth day of May, A. D. 1908.

In Chancery. 5153.

THE UNITED STATES OF AMERICA
vs.
FRED LIGHT.

Bill for an Injunction and for Other Relief.

On stipulation of counsel and good cause shown:

It is hereby ordered that the defendant herein file his supplemental answer in the above entitled cause answering amended paragraphs seven and eight of the bill of complaint as a separate document and as an amendment to the answer heretofore filed, and that said answer as thus amended be taken as the answer of defendant to said bill of complaint and amendments thereto filed.

In the Circuit Court of the United States for the Eighth Judicial Circuit and the District of Colorado.

50 In Equity. No. 5153.

THE UNITED STATES OF AMERICA, Complainant,
vs.
FRED LIGHT, Defendant.

The Supplemental Answer of Fred Light, the Defendant, Answering the Amendments of the Bill of Complaint of the United States of America, the Complainant.

Now comes Fred Light, the defendant above named, by his solicitors, and by leave of court first had, brings his amendments to his answer herein, answering the amendments of the bill of complaint herein as follows, to-wit:

First. The defendant amends his answer in the seventh paragraph of the fifth page thereof, for answer to the amended seventh paragraph of the bill of complaint herein, so that the said seventh paragraph of defendant's answer shall read as follows:

Seventh. Defendant admits that during the year 1907 he well knew the existence of said Holy Cross reservation; but denies that he well knew the boundaries thereof. Defendant admits that during said time he was thoroughly informed of and well knew the provisions of said rules and regulations which forbade that cattle be caused or allowed to graze within the said reservation without a license and permit of the character and authority mentioned in the said bill of complaint. Defendant admits that he liber-

51 ated upon the unreserved public domain, a large number of his cattle, to-wit, about four hundred, from his ranch during the spring of said year, without having secured or intending to apply for any permit or authority therefor from or authorized by the complainant or its Secretary of Agriculture, and submits to this court that under the law, he was not required to obtain any such permit or authority for so liberating his cattle from his said ranch; but defendant denies that he deliberately or intentionally liberated or drove forth from his said ranch, any number of cattle, and wrongfully, unlawfully or knowingly or otherwise, or at all, caused or permitted said cattle to go directly or otherwise from the said ranch of the defendant, over intervening or unreserved lands of the complainant or otherwise, into or upon the aforesaid portion of said reservation described in said bill of complaint as lying in said township nine; denies that he deliberately or intentionally or wrongfully or unlawfully or knowingly caused the said cattle or any part thereof to feed, graze, or otherwise trespass upon any portion of said forest reservation; denies that he knowingly or intentionally disregarded or held in defiance any of the said rules and regulations or the property and administrative rights of the complainant; and especially denies that any of his acts therein complained of, were or are wrong-

ful or unlawful. And defendant denies all and every of the
52 conclusions of law contained in the seventh paragraph of the said bill of complaint. But defendant admits that during said time and now there is no fence separating said reservation from the unreserved public land, and that he, at all times in said bill of complaint, mentioned, well knew there was no such fence.

Second. And defendant amends his answer in the eighth paragraph on the fifth and sixth pages of his answer, for an answer to the amended eighth paragraph of the bill of complaint herein, so that the said eighth paragraph of defendant's answer shall read as follows, to-wit:

Eighth. Defendant denies that the grasses or other fodder growing upon any or all of the unreserved lands upon which his cattle when liberated or excluded from defendant's said ranch will or do voluntarily go, without herding or driving, have at all times or at any time or are or will continue to be in each or every year or any part of any year, too poor in quality or too meagre in quantity to attract or content or adequately to nourish all or any considerable portion of the cattle which the defendant now has and controls or proposes to have or control in the conduct of his said business at or near said ranch; defendant denies that the water supply upon or accessible from such unreserved lands has been, is or will be in each or any year, or any part of a year, insufficient for all or any considerable number of said cattle. Defendant denies that in each or any year either beginning late in the spring or early in the month of June, or at any other time, except for a very short period, the grazing upon said reservation near to the said ranch becomes good in quality and abundant in quantity for cattle, equal or exceeding in numbers the said herd of the defendant, or continues through the grazing season, except for a very brief period of the year.
53 Defendant admits that water exists on said reservation at all times and sufficient in quantity and quality and of convenient access to meet the needs of any number of said or any similar herd. Defendant denies that there are now or ever have been at any of the times in said bill of complaint mentioned, well worn cattle trails or any cattle trails whatsoever, leading from the said ranch or the lands adjacent thereto directly into said resercation or otherwise or at all. Defendant denies that any such trails have been formed in the past by cattle of the defendant or of persons other than the defendant maintaining ranches on said Sopris Creek, who comply with the laws and regulations of the complainant or who cause their cattle to enter and graze within said reservation under complainant's license. Defendant denies that because of the existence of such trails or otherwise or because of the relative condition as to feed or water supply, as set forth in said paragraph, or because of said regular or lawful or duly licensed ingress into the said reservation by other cattle, that it is or will continue to be natural or inevitable that all or many of the cattle of the defendant will each year, when liberated or driven from the enclosures of said ranch, enter the said reservation soon thereafter or there remain grazing or trespass throughout the grazing season, or at all. Defendant

denies that the facts alleged in said eighth paragraph of the complaint are or have been long well known or at all known to the defendant; and defendant denies that even though defendant should not drive or herd his cattle or any part thereof directly to or upon said reservation, the result set out in the eighth paragraph is or will be more natural or necessary for the reason of the topography of the region at or about said ranch or for any other reason or at all; and defendant denies that the topography of the region around said ranch is such as will greatly or otherwise assist any alleged other operating causes or factors set out in the said eighth paragraph in directing cattle from said ranch or its vicinity into or upon said reservation; and defendant denies that there are any or have
54 ever been any operating causes or factors directing cattle from said ranch or its vicinity into and upon the said reservation.

Defendant admits that he claims that he did not cause any of his cattle to enter or trespass upon the said reservation in the year 1907 as averred or otherwise or at all, but confined his action to liberating his said cattle upon the unenclosed unreserved public domain adjacent to his said ranch and northeasternly thereof and in a direction away from said forest reserve as is more specifically set out in his further answer herein; and defendant humbly submits to this court that he had a lawful right so to do; but the defendant denies the conclusions of law pleaded in the second portion of the amended eighth paragraph of said bill of complaint and denies that by his said alleged acts he in any manner caused his cattle or any of them to go upon or feed upon any portion of the said reserve. Defendant denies that by reason of the facts set forth in the eighth paragraph of complainant's bill of complaint or by reason of any habit of said herd of the defendant or for any other reason, said cattle would naturally or necessarily go or that any appreciable number of them did in fact go into or upon the said reservation or feed or graze thereon; defendant denies that any of his cattle have ever trespasses on said reserve; defendant denies that said cattle or said herd of cattle belonging to defendant had any habit of going upon said reservation; defendant denies that said cattle made any unlawful entry or trespass upon said reservation; defendant denies that he desired or intended or desires or intends that said cattle should enter or trespass upon said reservation or consume the grasses or other herbage thereof in breach of the complainant's property or administrative rights or at all; defendant denies that there are or have been superior grasses upon said reservation; defendant denies that he took no precautions or did nothing whatever to prevent any kind of an entry or trespass upon said reservation; and defendant denies that there was any unlawful entry or trespass upon said reservation by cattle owned by him either in the manner alleged in said bill of complaint or at all. But defendant
55 submits unto this honorable court that if the said cattle or any part thereof did in fact during said spring or summer of 1907 or at any time enter upon said unfenced reservation or feed or graze thereon as in said bill of complaint alleged or otherwise,

such acts are nor wrongful or unlawful and did not constitute and do not constitute a trespass upon said unfenced reservation or a breach of complainant's property or administrative rights therein or otherwise or at all.

Wherefore this defendant having fully answered, confessed traversed and avoided or denied all the matters in the said amendments of said bill of complaint material to be answered, according to his best knowledge and belief, humbly prays this court to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

FRED LIGHT,
Defendant.

ETHERBERT WARD,
RALPH W. McCRILLIS,
Solicitors for Defendant.

UNITED STATES OF AMERICA,
State of Colorado, City and County of Denver, ss:

Fred Light of lawful age being first duly sworn upon his solemn oath says that he is the defendant named in the above and foregoing amendments to his answer, answering the amendments of the bill of complaint herein, which foregoing amendments are sub-
56 scribed by him; that he has read the same and knows the contents thereof, and the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters, he believes it to be true.

FRED LIGHT.

Subscribed and sworn to before me this 10th day of July, A. D. 1908.

Witness my hand and notarial seal.

My commission expires December 24, 1910.

[NOTARIAL SEAL.] EMILIE L. SEALES,
Notary Public.

(Endorsed:) No. 5153. U. S. Circuit Court of Colorado. United States of America, Complainant, vs. Fred Light, Defendant. Supplemental Answer. Filed Jul. 21, 1908, Charles W. Bishop, Clerk.

UNITED STATES OF AMERICA,
District of Columbia, ss:

In the Circuit Court of the Eighth Judicial Circuit.

In Equity. No. 5153.

UNITED STATES OF AMERICA, Complainant,
vs.
FRED LIGHT, Defendant.

Replication.

57 This replicant, United States of America, saving and reserving to itself all and all manner of advantages of exception

which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, Fred Light, as the same stands amended by the amendments thereof contained in the so-called supplemental answer of the said Fred Light, for replication to the said answer so amended, saith that it does and will aver, maintain and prove its said amended bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant as so amended is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without this, that any other matter or thing in the said answer as so amended contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denies, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

ERNEST KNAEBEL,
Solicitor for Complainant.

(Endorsed:) No. 5153. In the U. S. Circuit Court for the district of Colorado. United States of America, Complainant, vs. Fred Light, Defendant. Replication. Filed Aug. 3, 1908, Charles W. Bishop, Clerk. Ernest Knaebel, Solicitor for Complainant, 420 Equitable B'ld'g, Denver, Colo.

58 Fifty-ninth day, May Term. Monday, October 5th, A. D. 1908.

Present: The Honorable Robert E. Lewis, District Judge, and other officers as noted on the fifth day of May, A. D. 1908.

Bill for an Injunction and for Other Relief.

In Chancery. 5153.

THE UNITED STATES OF AMERICA
vs.
FRED LIGHT.

Upon consent of both parties hereto by their respective solicitors:
It is ordered that Clifford G. Rowe, Esq., U. S. Commissioner of Glenwood Springs, Colorado, within the district of Colorado be, and he is hereby, appointed special examiner under equity rule 67 to take proof for final hearing on the part of the defendant in pursuance of the rules and practices of this court, orally, at his office in said Glenwood Springs, Colorado.

59 UNITED STATES OF AMERICA,
District of Colorado, ss:

Notice of Election to Take Evidence Orally and of Hearing Before Examiner.

In the Circuit Court of the United States for the Eighth Judicial Circuit.

In Equity. No. 5153.

UNITED STATES OF AMERICA, Plaintiff,
vs.
FRED LIGHT, Defendant.

To the above named defendant, and to Ethelbert Ward and Ralph W. McCrillis, his solicitors:

You, and each of you, will take notice that the plaintiff in the above entitled cause desires and has elected that the evidence to be adduced therein be taken orally, and further that I shall proceed to take proof for final hearing on the part of the plaintiff under the sixty-seventh Rule of the Supreme Court for courts of equity, as amended, and in pursuance of the rules and practice of this court, orally, before Sanford C. Hinsdale, Esquire, an Examiner of this court, at his office No. 803 Continental Building, in the City and County of Denver, Colorado, on the 23d day of September, 1908, at the hour of ten o'clock A. M.

You are invited to attend and cross-examine all witnesses produced in behalf of the plaintiff. The examination will be adjourned from day to day and to such time and place as may be required, without further notice.

60 Dated, Denver, Colorado, September 16th, 1908.

ERNEST KNABEL,
Solicitor for Plaintiff.

Due service of the foregoing notice is hereby accepted at said City and County of Denver this 16th day of September, A. D. 1908.

ETHELBERT WARD,
RALPH W. McCRILLIS,
Solicitors for the Above-named Defendant, Fred Light.

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the Circuit Court of the United States Within and for the District of Colorado.

In Equity. No. 5153.

UNITED STATES OF AMERICA, Complainant,
vs.
FRED LIGHT, Defendant.

Be it remembered, that on the 24th day of September in the year of our Lord one thousand nine hundred and eight, in pursuance of a notice and proof of service thereof hereto attached, the parties to the above entitled cause appeared before me, Sanford C. Hinsdale, Examiner in Chancery of the Circuit Court of the United States for the district of Colorado, at my office 803 Continental Building in the city of Denver, state of Colorado; the complainant in said cause by Ernest Knaebel, Esq., and the respondent by Ethelbert Ward, Esq.

61 And on the said 24th day of September, and on the succeeding days to which the taking of evidence herein was successively adjourned, as hereinafter stated, came also before me John McLaren, W. S. Copeland, Harry H. French, Gideon Cookman, N. S. Ashlock, Frank A. Powell and Jay Burdick to testify as witnesses on behalf of the complainant; and the said witnesses having been by me first duly cautioned and sworn according to law respectively, to testify the truth, the whole truth, and nothing but the truth in the matter and suit in controversy aforesaid, were severally examined before me on oral interrogatories propounded to them respectively by counsel, as in their several depositions fully appear, that is to say;

It is hereby stipulated and admitted by the defendant herein that all of the cattle mentioned in his answer as the same now stands, or hereafter shall be amended, are cattle over which he, the defendant, has and exercises control.

By Mr. WARD: The defendant objects to any testimony to be given in this cause on behalf of complainant, for the reason that the bill of complaint herein, and the amendments thereto, do not entitle complainant to the relief prayed for, or to any relief in equity. This objection to go to the present witness and all other witnesses on behalf of complainant.

JOHN MCLAREN, a witness produced on behalf of the complainant, being duly sworn testified as follows:

62 Direct examination.

By Mr. KNAEBEL:

Q. Your name is John McLaren?
A. Yes, sir.

Q. You are the Deputy Forest Supervisor of the Holy Cross Forest?

A. Yes, sir.

Q. And you live and have your official head-quarters at Glenwood Springs, Colorado?

A. Yes, sir.

Q. How long have you lived in that vicinity?

A. I moved my family there March 2nd of this year and have lived there continuously ever since last summer; that was my place of residence, although my family wasn't there until March 2nd, 1908, but between July 15th and November 5th that was my head-quarters, although my family wasn't there,—1907.

Q. Do you know the defendant, Fred Light?

A. Yes sir.

Q. Do you know the situation of his ranch, and the boundaries thereof?

A. Yes, sir.

(Paper marked by the Examiner "Exhibit 1, Complainant's Proofs")

Q. I show you a map marked "Exhibit 1" and ask you to state whether you prepared it?

A. Yes, sir.

Q. And from what data?

A. From the approved plats on file in the Glenwood Springs Land Office.

Q. Does the Glenwood land district cover all of the territory and region appearing upon that map?

A. It does.

63 Q. When did you make the map?

A. About the 1st of July, 1908, the exact date I am not quite sure of.

Q. At all events, since the beginning of this suit?

A. Yes, sir.

Q. Did you indicate upon that map all of the lands in the townships appearing upon it which have been entered or filed upon, according to the records of the Register in the Glenwood Land Office?

A. Yes, sir, everything shown in these townships is the patented land on record.

Q. That is not a direct answer to the question. I asked you if you indicated upon the map all of the lands which have been entered or patented in the townships which the map revealed?

A. All which are patented. Of course the plats in the Land Office records filing might not appear.

Q. Did you give everything that appears of record in the office of the Register?

A. Yes, sir.

Q. And the lands that appear to have been entered or patented by private individuals are marked in what color upon the map?

A. Yellow.

Q. Did you mark upon that map the boundaries of the Holy Cross Forest?

A. Yes sir.
Q. Where they appear in the region covered by it?
A. Yes sir.
Q. And how are those boundaries marked?
A. The Forest boundary is marked with a green line.
Q. Is Mr. Light's ranch specially designated upon that map?
A. Yes sir.
64 Q. How?
A. By a black boundary line.
Q. The courses of the streams as appearing upon this map, according to their designations are they approximately correct?
A. Yes sir.
Q. Please explain what these dotted lines marked "trail" are?
A. This is a trail running nearly west and then turning north into the Forest boundary, near the northeast corner.
Q. You are now referring to the more northerly of the two lines marked "trail"?
A. Yes sir.
Q. And the southerly of the two lines marked "trail" also passes, does it, from the vicinity of Mr. Light's ranch into the Forest?
A. Yes sir.
Q. Did you plat them from observations upon the ground?
A. Yes sir.
Q. Are you acquainted with the country that is covered by that map?
A. Yes sir.

Mr. KNAEBEL: We offer that map in evidence (referring to Exhibit 1).

Mr. WARD: We object to the map and the trail marked thereon as not being binding upon defendant; and also object to the map as not being an official map that would be binding upon any one, and that there is nothing in the testimony to show that the map is accurate and correct as far as the patented lands were concerned and the exact location thereof.

A. I understood you to say that the private lands are designated on that map in yellow?
A. Yes sir.
Q. I will now ask you whether they are marked on that
65 map in accordance with the legal subdivisions as they appear in each instance in the records of the Register in the Land Office at Glenwood Springs?
A. They are.
Q. You did not, then, make a survey on the ground of each of these entries or patented tracts?
A. No, sir.
Q. But you laid them down upon this plat in accordance with the legal subdivisions as the entries appear in the office at Glenwood Springs?
A. Yes sir.
Q. And all of them?
A. Yes sir.

Q. How many times have you visited Mr. Light's place?
A. During last summer, and since then about four times, I think.
Q. When did you go there last year?
A. I was there on August 28th, 1907.
Q. Did you see Mr. Light then?
A. No, sir.
Q. What was the occasion of your visit?
A. I was there as Supervisor looking over the range in respect of certain cattle.
Q. Did you go to the ranch itself?
A. I went to the western boundary of the ranch.
Q. And where else did you go?
A. We rode over a large portion of the range on Sopris Creek and Capital Creek.
Q. Did you go up into the Reservation?
A. Yes sir.
Q. Did you find any of Mr. Light's cattle?
A. Yes sir.
Q. Where were they?
A. They were in what is knows as Hay Park, most of them.
66 Q. You will state as nearly as you can where Hay Park is with reference to public subdivisions?
A. Hay Park would be located approximately in section 14, town 9, range 87.
Q. Within the Reservation, the Holy Cross Reservation?
A. Yes sir.
Q. How many of Mr. Light's cattle did you find there?
A. I found twenty-three head of range stock and one bull.
Q. Did you find any horses?
A. We found eleven head of horses.
Q. How did you know that they were his, the cattle and the horses?
A. By the box L. brand.
Q. Will you please mark upon the minutes of the stenographer a facsimile of the box L. brand for subsequent transcription into the transcript?

(Witness does as requested, viz: L

To avoid delay in further proof on the matter defendant admits that during the year 1907 all cattle branded box L. were owned by him, and that the brand is still his property.

Q. Is that all of the cattle of Mr. Light that you saw upon the Forest Reserve that year?
A. Yes sir.
Q. Did you give him any notice that year to remove the stock?
A. No sir.
Q. You knew, however, officially that he had been previously notified?
A. Yes sir.

Mr. WARD: We object to the last answer and move to have it stricken out on the ground that it is hearsay.

Mr. KNAEBEL: Counsel for complainant states his intention to prove by another witness that such notice was, in fact, given.

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Q. Now you went there again during the present year?
A. Yes sir.
Q. When did you go the first time?
A. On the 19th day of May.
Q. With whom?
A. In company with Mr. French.
Q. The Supervisor?
A. Yes.
Q. Did you go to the defendant's ranch?
A. We went past the defendant's ranch right along the boundary lines, not inside to the house.
Q. And then where did you go?
A. During that day and the next, the 20th, we rode the range between East Sopris Creek and Roaring Fork examining as to the character of the range, the location of water, and location of stock.
Q. Do you refer to the region appearing upon Exhibit 1 as vacant public lands to the northeast, north and northwest of the Light ranch?
A. Yes sir.
Q. And lying between the two creeks referred to?
A. Yes sir.
Q. What was the character of the country, of the grass, and the nature and extent of the water supply as you found it?
A. The country is principally mountainous, in many places cliffs, in fact, and very rocky, and toward the east is more rolling but steep. It is principally covered with sage-brush, oak, piñon, and cedar. There is a small quantity of forage grass which I should call blue-stem.

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Q. As you go to the northwest from Mr. Light's ranch does the country become more rough or less?
A. More rough and abrupt.
Q. State as nearly as you can in what sections that portion of the country is available for the pasture of cattle; that is, is smooth enough and accessible enough for cattle to range upon readily.
A. As to area, do you mean?
Q. No, state by sections approximately.
A. (Witness referring to plat.) The best part of it would come in approximately section 28.
Q. And the rest of the vacant land comprised within the region of your visit is of what character?
A. As previously described it is mountainous and steep.
Q. Well, is it accessible at all throughout the northwesterly part of it?
A. It is not easily accessible, you can get at it of course.
Q. But difficult of access?
A. Yes sir.
Q. Have you had some experience in the cattle business?
A. Yes sir.

Q. Prior to your employment by the Government?
A. Yes sir.
Q. And such as to acquaint you with the value of fodder, and the character of ranges for cattle?
A. Yes, sir.
Q. You will please, then, state in regard to the region you have just referred to lying to the northeast, north and northwest of Mr. Light's ranch; what, in your opinion, is its value as a range for cattle, and how many cattle, in your opinion, it would be capable of supporting?

69 Mr. WARD: We object to the question on the ground that it is incompetent, immaterial and irrelevant; and on the further ground that he has not shown any qualification to judge the *the* range in this particular neighborhood.

A. This portion of the range as described is not suited to cattle grazing except it might be at a very short period in the early spring; this is true owing to the complete lack of water on the range, except fed by snow or heavy rains; it would be necessary for cattle to go down to East Sopris Creek from this range, or to go further down on Capital Creek in order to get to water, and the character of the country is such that the cattle do not range in that way; they stay where there is water on the range; which would make it worthless as a cattle range.
Q. What was the condition of the grass on this particular portion of the region shown by the map during the time of your inspection of it, last referred to?
A. In May there was a small amount of blue-stem there which cattle would graze upon.
Q. Was it thick or sparse?
A. Rather sparse.
Q. Did you see any cattle upon it?
A. No sir.
Q. Did you visit that region again?
A. No sir.
Q. Now state, if you know, whether the lands marked upon the map in yellow, and thereby designated as private lands, are, as a rule, fenced?
A. Yes sir.
Q. So that cattle could not enter upon those regions marked in yellow upon the map, from without?
A. No sir.

70 Mr. WARD: We object to the question and answer relating to the land designated in yellow being, as a rule, fenced, for the reason that the term "as a rule" is too indefinite and uncertain.

Q. Are you acquainted with the facts with reference to the fencing of these private lands?
A. Yes sir.
Q. Been around them?
A. Yes sir.
Q. Now state, please, whether they are fenced or not?

A. That particularly refers to the west lines of the patented ground on East Sopris Creek from Mr. Light's place south, I have been along all these ranches and find them fenced. The survey line was not run to determine accurately the location of those fences, but the fences follow generally the course of the patented land as shown on this map.

Q. Now if cattle were turned out at the northeasterly side of Mr. Light's ranch they would at once go upon what character of country?

A. Cattle turned out to the northeast?

Q. Yes, the northeasterly portion of it, how would the slope be?

A. The slope, it would be a south slope, quite steep, the cattle would go up gulches if they were herded to the northeast.

Q. Is the country cut up there?

A. Yes, sir.

Q. Is it fertile, or barren?

A. It is not very fertile; the soil is not very deep.

Q. And supports, I believe, as you said a very sparse growth of grass?

A. Yes sir.

71 Q. Has your business as supervisor brought you in contact, and does it bring you in contact continually with cattle men?

A. Yes sir.

Q. And are you obliged to ascertain and know in your official capacity about the habits of cattle, and the value of ranges?

A. Yes sir.

Q. And have you made a study of those things?

A. Yes sir.

Q. Prior to your appointment as an assistant supervisor, I believe you stated you were in the cattle business?

A. Not in the cattle business, no, sir, associated with cattle.

Q. And doing what kind of work?

A. Riding for cattle.

Q. Rounding them up?

A. Yes sir.

Q. For how long a time did you do that kind of work?

A. That would be pretty hard to tell; at different times I have worked at it I should judge six months.

Q. So you feel that from what you learned you are able to express some opinion concerning the value of a range?

A. Yes sir.

Q. And have you made some study and observation concerning the value of different kinds of fodder, grasses?

A. Yes sir.

Q. You say this is blue-stem that grows sparsely in the region referred to northeast of the ranch?

A. Yes sir.

Q. What happens, if you know, to that kind of grass during the hot weather?

A. During the hot weather without moisture it will dry up.

Q. Do you know whether in this particular region it does dry up?

72 A. Yes sir.

Q. Each year?

A. For the past two years it has.

Q. The present season, by the way, the past summer, by the way, was an unusually wet or dry one?

A. It was unusually wet; during August we had a great deal more rain than usual.

Q. Now you will please describe the place or places where water is accessible to cattle which might be turned out from Mr. Light's ranch on its northeasterly side?

A. The cattle could not reach water without going either to the East Sopris Creek, north of Mr. Light's ranch——

Q. How far north?

A. Why right along his north fence line where the creek leaves the ranch.

Q. Below that on Sopris Creek what is the character of the cañon or gulch which it traverses?

A. It is rather narrow; the mountain to the south is very steep, covered with sage brush, oak and cherry trees.

Q. Well, is the creek accessible at other points, or at all readily accessible at other points northwesterly from Mr. Light's except at the place you have mentioned, near to his north fence?

A. Yes sir, cattle can go right down the creek.

Q. Is there any grass to be found there throughout the grazing season?

A. On the hill south of the creek there is some forage.

Q. In your opinion how many cattle would the vacant public lands to the northeast, north and northwest of Mr. Light's

73 place so far as East Sopris Creek on one side and the highest accessible point that they would reach upon the other—how many cattle could be supported throughout the grazing season in that locality?

Mr. WARD: We object to the question for the reason that the witness has not qualified himself in any particular to give an opinion as an expert, or even as a cowpuncher, upon the question of the range and the number of cattle supported; his qualifications being in answers of yes and no to the leading questions of complainant's solicitor, and his experience by his own testimony being shown to have been six months riding for somebody somewhere, I dont know,—somewhere not shown.

A. I should judge that by constant herding, having a herder with the cattle, that fifty or sixty head might be supported on that range.

Q. Adequately?

A. Yes, sir; not to keep them in fine shipping shape.

Q. What would you have to do with them in the way of herding?

A. They would drift down to the water themselves, but in order to have them stay on that range it would be necessary to drive them back.

Q. Why is that?

A. For the reason that the country is rough and not well adapted to cattle grazing, and they can drift to better range.

Q. Now please state how and why they would drift to better range?

A. Cattle will graze where they can get water close to the range, and these well defined cattle trails leading up the mountain there are easily followed by cattle, and when once located on the
74 higher ranges where there is both feed and water they do not drift down toward the creek.

Q. Now please compare the range in this region that we have been referring to, which would be accessible, directly accessible from the northeast of Mr. Light's ranch, with the range to be found upon the forest,—in the region of the forest shown upon the map Exhibit 1.

Mr. WARD: We object, for the reason that, as before stated, he has not qualified himself to express any opinion or judgment on the question; and for the further reason that he has not stated that he has made any examination or knows anything about any other portion of the range except around East Sopris Creek north and northwest of Mr. Light's ranch.

Q. Have you been over the forest, the portion of it that appears upon that range?

A. Yes sir.

Q. How many times?

A. Four times.

Q. Have you examined it carefully?

A. Yes sir.

Q. Now you may answer the preceding question.

A. The character of the forage in this higher country inside of the forest is different and better suited to cattle; it consists of bunch grass and wild oats; there is plenty of timber feed such as wild peas, etc., and is well watered. The range north which has been referred to here before is not well watered and does not contain the feed that the other area does.

Q. Now you may tell about the trails that you have re-
75 ferred to, where they run from and how well defined they are, and where they go to. Are those the trails—I will ask you first—that appear upon the map marked as such?

A. Yes sir, the trail which is farthest north here leaves Sopris Creek at the northwest corner of Mr. Light's place, runs in rather a westerly direction toward the northeast corner of the Holy Cross forest where it strikes a small creek and follows up into the forest along that creek. There is also a trail running approximately south along Mr. Light's place toward the forest, and this trail is joined by another at a point at the southwest corner of Mr. Light's place, where it joins the Finley ranch; these two trails converge, and the main trail runs approximately a little south and a little southwest across the boundary line of the forest and up into Hay Park.

Q. Now state whether or not there are any fences along the course of that trail, and describe them, if there are?

A. The first trail mentioned does not come close to the fences except at the starting point, Mr. Light's northwest corner, but the trail running south from that point follows along the western line of Mr. Light's place, and the further south it goes the further it converges from the fences from the southwest corner of Mr. Light's place.

Q. What is the character of the country on the west of that trail immediately west with respect to its being steep or not?

76 A. The mountain is quite steep, although it is rolling; the course of the trail, however, does not go straight up the mountain but follows along an easy grade.

Q. Is there anything about the topography there or the situation of the fences, or both combined, which would or would not tend to keep cattle going on that trail?

A. The location of the fences along Mr. Light's boundary line would keep the cattle along that course, and the topography of the country is such, after leaving that, that it is natural for cattle to drift along the course of the trail.

Q. Well, state what you have to say as to whether the trail is the easiest way in which cattle would go——

A. It is.

Q. (Continuing:) —from Mr. Light's place from the southwestern part of it?

A. It is; the tendency of the cattle to follow this trail is due to another reason also; there is no water available along the fenced portion of these patented claims here, and cattle follow this trail across the boundary line there in Hay Park and that vicinity where there is plenty of feed and water.

Q. Where is the available water for the cattle, in the forest?

A. Yes sir.

Q. And none outside of it?

A. There is a few seep holes, southwest from Mr. Light's place there are two seep holes which afford a very small amount of water.

Q. During what times of the year?

77 A. Well, May and June, and possibly not entirely dry in July.

Q. Did you visit it later than July, this region?

A. No.

Q. When was your next visit?

A. The last time I was at this place was in June.

Q. This year?

A. Yes sir.

Q. You stated that you visited it last year in August?

A. Not this particular point where these seep holes are.

Q. Did you find any cattle of Mr. Light's in the reserve during the present year?

A. Yes sir.

Q. State the time and circumstances, and number of cattle and situation?

A. On June 5th I examined the range west and south of Mr.

Light's ranch along East Sopris Creek and within the Holy Cross Forest. The exact number of cattle which I saw branded "Lazy V. T. or "Lazy Open A. T" (that is the same brand that may be read in two different ways), namely ≻|; also cattle branded "U. slash U," namely, $^{U}/_{U}$. I cannot give without referring to notes taken on that day.

Q. You may do so.

A. (Witness referring to note book.) Fourteen head of cattle in the forest.

Q. What date was that?

A. June 5.

Defendant here admits that all cattle which the evidence may show were found in or in the vicinity of the Light ranch, or the Holy Cross Reserve east thereof during the summer of 1908 branded U. slash U, or Lazy V. T. were and are cattle under the control by the defendant.

78 Q. Mr. McLaren, were these cattle you have last referred to upon the lands of the Government, within the forest reservation?

A. Yes sir.

Q. And about what portion of the reservation, stating approximately?

A. They were located along the East Sopris Creek and in the Hay Park country.

Q. Could you designate it approximately here where the section would fall if that were surveyed?

A. I should say approximately section 14 and section 22; that is unsurveyed country up there, and that is approximately——

Q. What township?

A. Township 9 south range 87 west.

Q. Upon what other occasions, Mr. McLaren, have you found cattle of the defendant within the reservation on Government land?

A. On September 6th I made another examination of this same territory and found eleven head of "U Slash U" and two head of "Lazy V. T."

Q. That makes two occasions in the year 1908 when you found cattle of the defendant within the reservation?

A. Yes sir.

Q. On Government land, were they?

A. Yes sir, within the——

Q. Within the reservation?

A. Within the reservation.

Q. Were there any other occasions?

A. No, sir.

Q. Now who went with you on the first occasion?

A. I was accompanied by supervisor French and ranger Burdick.

79 Q. Did you go there to search for Mr. Light's cattle?

A. Yes sir.

Q. Did you all stay together or did you separate for the purpose of counting?

A. We all rode quite close together, within touch of each other.

Q. And all counted the same cattle?

A. Yes sir.

Q. That was the first visit that year?

A. Yes sir.

Q. Now on the second occasion in September whom did you go with?

A. I was accompanied by ranger Powell.

Q. Do you know whether Mr. French and Mr. Ashlock went along on that occasion?

A. Mr. French and Mr. Ashlock and Mr. Arnold and Mr. Burdick covered another portion of the range on that date.

Q. Do I understand you to mean that on that occasion while you were counting cattle within the reservation these other gentlemen you have named as covering another portion were out of sight——

A. Yes sir.

Q. (Continuing:) —so that the cattle you counted were not counted by them?

A. Yes sir.

Q. Nor the cattle they counted, counted by you?

A. That is correct.

Q. Do you know who the former owner of the "Lazy V. T." cattle was?

A. It belonged to Mr. Ed Stauffacher.

Q. And where was Mr. Stauffacher's ranch?

A. It is located near the town of Katherine on the Colorado Midland Railway.

Q. How near is that to Mr. Light's place?

80 A. Approximately fourteen miles.

Q. Can you state whether these cattle branded "Lazy V T" had ranged on the reserve or in that immediate vicinity that we have been referring to, during the grazing season of 1907?

A. No sir, they did not graze in this vicinity of the Holy Cross forest.

Q. So that they were cattle strangers to the country?

A. Yes sir.

Cross-examination.

By Mr. WARD:

Q. Mr. McLaren, where were you born?

A. I was born in Matanzas, Kansas.

Q. When did you come to Colorado?

A. In the year 1879.

Q. In what part of Colorado have you lived?

A. In Huerfano County, southern part, Pitkin County and Garfield and Chaffee County.

Q. How old were you when you came to Pitkin County?

A. I was fourteen or fifteen years old.

Q. How old are you now, Mr. McLaren?

A. I am thirty-two.
Q. How many years have you lived in Pitkin County?
A. Thirty, I should say; I was born in '78, this is 1908.
Q. How many years have you lived in Pitkin County?
A. Fourteen or fifteen years.
Q. Is that continuous, or did you go to Chaffee County?
A. I was in Chaffee County; during that time I was in Chaffee County for six months as near as I can tell.
81 Q. And I believe you said in your direct examination that you had ridden after cattle for six months?
A. Approximately.
Q. And that is the extent of your experience in the cattle business?
A. That is the extent of my riding; I have been associated with cattle in cattle countries.
Q. In the towns or in the country?
A. Both.
Q. But your riding was confined to six months?
A. Practically.
Q. Was it four months, or was it six?
A. Approximately six months.
Q. For whom did you ride?
A. I rode for Robert Reed.
Q. Where?
A. On Brush Creek, Lime Park.
Q. What county was that?
A. That was in Eagle and Pitkin counties.
Q. How far from Fred Light's ranch, or approximately?
A. I should say thirty miles.
Q. When was that; approximately, I don't care for exact dates.
A. 1904 and '5 I think.
Q. Now for whom else did you ride?
A. Anthony Sneve.
Q. Where?
A. The same country.
Q. At what time?
A. During the same year.
Q. So during the six months of your cattle experience in riding you worked for three different men?
A. I did, two of whom I have named; I worked for a man by the name of Caldwell also.
Q. And you are familiar with the cattle business in the Roaring Fork Valley are you?
A. Not particularly; I never spent much time on the range in the Roaring Fork Valley.
82 Q. That is, I mean the valley where Fred Light's ranch is situated.
A. Yes sir.
Q. You are, not particularly familiar with the cattle business there?
A. Not prior to the time of my entering the service.

Q. When did you become familiar with the cattle business in the neighborhood of Fred Light's ranch?

A. In 1907.

Q. And how many times were you over there in 1907 in the vicinity of Fred Light's ranch?

A. Once.

Q. And that familiarized you with the conditions from that one visit, did it?

A. Yes sir, I made a pretty thorough examination.

Q. Up to that time you didn't know the number of cattle that had been grazing in that valley?

A. I knew approximately the number at that time.

Q. At that time, in 1907 and '8?

A. Yes sir.

Q. But you have no knowledge of the number of cattle that had been grazing there before that, six or eight years before that?

A. No sir not six or eight years.

Q. And you have no idea of the carrying capacity of the section of the valley between, say, ten miles below Aspen and Carbondale, have you, any idea how many cattle it will support?

A. No sir.

Q. Are you aware of the fact that there used to be three times as many cattle in that country as there is now?

A. No sir.

Q. Never heard of that?

A. No sir.

83 Q. You don't know about that, do you?

A. No, sir.

Q. Now when did you begin to study grasses and herbage and cattle feed?

A. General observation of cattle feed, dates back a good many years ago, such as I have been able to get from the ranchmen.

Q. Do you remember seeing considerable cattle in that valley in years past?

A. In the Roaring Fork Valley?

Q. Yes.

A. No sir.

Q. Never have seen many cattle there?

A. No sir.

Q. And is it your opinion as an expert, as qualified by you, that that valley can support very few cattle?

A. No sir, it will support quite a number of cattle.

Q. Taking the Roaring Fork valley from the mouth of Crystal River to about ten miles below Aspen, up as far as the forest reservation, is that territory capable of supporting any considerable number of cattle?

Mr. KNAEBEL: This is objected to, since it leaves wholly in doubt whether the question intends to include the school lands that are in private ownership and fenced, and not subject to the use of cattle turned loose upon the open range.

Q. Do you understand what I mean by "range"? You are a cattle man.

A. I think so.

Q. Does that mean land under fence?

A. That might be land under fence.

Q. That is your understanding of a range, cattle range?

84 A. There are cattle ranges under fence.

Q. That is your understanding of a cattle range, as a cattle man—land under fence?

A. I understand it both ways.

Q. I will modify my question by stating that a range means land not under fence. Now answer the question.

A. I will answer the question to the best of my ability; it is very indefinite since the question states ten miles below Aspen to the forest boundary; the forest boundary does not go down across the Roaring Fork valley ten miles below Aspen; the Roaring Fork valley is very greatly taken up by patented claims and certainly would not support a great amount of cattle since there isn't much range open.

Q. How does the range, the grass and feed upon the territory adjoining Fred Light's ranch north and northeast and northwest of him, compare with the open range upon unreserved lands in the Roaring Fork Valley from Crystal River up to about ten miles south of Aspen?

Mr. KNAEBEL: That is objected to as utterly irrelevant, incompetent and immaterial.

A. A close examination has been made of the range adjacent to Mr. Light's ranch, while only general observation has been made of that along the Roaring Fork valley.

Q. What is your answer, you don't know?

A. I should say that the Roaring Fork valley range is better watered than the range adjacent to Mr. Light's, making it a

85 better range.

Q. Do you mean the portion of the valley northwest of Mr. Light's or northeast of Mr. Light's?

A. I am speaking in general of the range north, northeast and northwest of Mr. Light's as being East Sopris Creek and the Roaring Fork.

Q. And you say that is a poorer range than the rest of the valley?

A. It has poorer water at any rate.

Q. How about the grass?

A. I haven't made a minute examination of any other portion of the range in the Roaring Fork valley.

Q. Did you ever make any examination, minute or otherwise, of grasses in other portions of any other ranges?

A. Yes sir.

Q. Where?

A. In the Frying Pan and tributaries.

Q. When?

A. In 1906, and last summer coming under my duties as acting supervisor, I examined some ranges up about Red Cliff and about Eagle.

Q. These were not forest trespass cases were they?
A. No, sir.
Q. How does the Frying Pan range compare with the Roaring Fork range?
A. It is a better range.
Q. You made a particular examination in reference to the water, you say?
A. Yes sir.
Q. How far is it from water, from the middle of the unreserved public lands north of Fred Light to available water, by referring to the map?
A. The way cattle would travel?
86 Q. I didn't ask you about that, I asked you how far it is to water?
A. You want an air line direction?
Q. Yes, of course, then we can get the other afterwards?
A. Approximately a mile and a mile and a half.
Q. How far would it be for a cow standing in the middle of that area mark between Roaring Fork and East Sopris Creek north of Mr. Light's ranch,—how far would the cow have to go to get to water, approximately?
A. Approximately two to two and a half miles, I should judge.
Q. Depending how she walked?
A. Depending on the trails as they exist.
Q. You have no trails marked on that map?
A. There are no very well defined trails over the mountain.
Q. How far does your experience as a cow man teach you that a cow may go for water each day without hurt, without damage to the cow?
A. Cattle ordinarily water every day.
Q. Yes. Now do you understand the question?
A. I think so.
Q. (Question read by the stenographer).
A. It does not teach me that stock can go without water without hurt.
Q. Is that your answer?
A. Yes sir.
Q. (Question again read by stenographer).

Mr. KNAEBEL: I object to that question as being ambiguous, it appears to me—How far can a cow go without water without damage to the cow. The witness has answered that question.
Mr. WARD: That is not the question.

87 Q. (Question again read by the stenographer). I will repeat the question in another form. How far can a cow go for water without damage to the cow?
A. She can be taken a considerable distance if handled properly, driven slowly?
Q. I didn't say driving.
A. You asked how far a cow could be taken for water.

Adjourned until Friday the 25th day of September, A. D. 1908, at the hour of nine o'clock A. M.

Pursuant to the foregoing adjournment the parties appeared by their respective solicitors, the complainant appearing by Ernest Knaebel, Esq., and the defendant appearing by Ethelbert Ward, Esq., on Friday the 25th day of September, A. D. 1908 at the hour of nine o'clock A. M., whereupon the following proceedings were had:

Cross-examination of JOHN MCLAREN continued.

By Mr. WARD:

Q. Mr. McLaren, when did you make the map introduced into evidence?

A. In July 1908.

Q. About what time?

A. About the fore part of the month; I cannot remember the exact date.

Q. Now when were the different times that you were on the country in the neighborhood of Mr. Light's ranch? I think you said four times, if I am not mistaken; when were those times?

A. August 28, 1907, May 1908, June 5, 1908, September 6, 1908.

Q. Now when did you examine this territory for trails?

A. On August 28, 1907——

88 Q. Did you find any trails then?

A. (Witness continuing:) —June 5th, 1908 and September 6th, 1908.

Q. Did you notice any trails on August 28, 1907?

A. Yes sir.

Q. Are those the trails that you have now marked on this map?

A. One of those trails is pointing on plat),—the southerly trail I saw at that time.

Q. Did you have this map with you when you were locating those trails?

A. Last Fall?

Q. At any time?

A. No sir.

Q. How did you locate those trails in reference to section lines?

A. Those trails were located by approximation as nearly as possible from actual observations on the ground.

Q. Did you find there any section corners?

A. Yes sir.

Q. Indicate on the map, will you, what section corners you found between Mr. Light's ranch either north or west of it; give the numbers of the sections.

A. In the northeast corner of section six.

Q. You found that section corner?

A. Yes sir, also the northwest corner section 6, and the intervening quarter corner.

Q. Did you notice any other section corners?

A. At the northeast corner of the forest boundary there was a section corner established; also the intervening quarter corner between that and the northwest corner of section 6.

89 Q. Did you find some corners farther down south of the corner last named.

A. Yes sir.

Q. What corners did you find?

A. I found each section corner south.

Q. Give the names and the numbers, please.

A. Southwest corner section 1.

Q. What township and range?

A. Township 9, range 87. The southwest corner of section 12; southwest of section 13,——

Q. That will be enough. Mr. McLaren, in making that map you were very careful to have it accurate, I suppose?

A. Yes sir.

Q. Now what memoranda did you have on going over those trails so as to enable you to mark the trails on the map?

A. The finding of these section corners here.

Q. And then did you have a plat with you, or a map?

A. I had township plats with me, this plat.

Q. And you marked the trails upon the township plats as you went along them?

A. No sir.

Q. When did you mark the trails on any of the plats, recently or——

A. Yes recently.

Q. So up until within a few weeks you had no map or plat or tracing in your possession which you had made showing where the trails were?

A. No sir.

Q. So you marked the trails from memory upon that plat?

A. Yes from memory, and the examination of the ground.

Q. And you think that the marking was made some time
90 in September 1908?

A. Yes sir.

Q. And was it after September 6th?

A. Yes sir.

Q. And where was it, in Glenwood or Denver that you marked these trails; you marked them when, on the 24th did you?

A. 24th; that is the reason I asked the date of the month; I had forgotten.

Q. Up to yesterday had you any knowledge of the fact that the question of trails would be material in this case?

A. Yes sir.

Q. How did it happen that you made no map or tracing or plat of trails up until yesterday?

Mr. KNAEBEL: Objected to as immaterial.

The EXAMINER: You can answer if you know, Mr. McLaren.

A. There was no reason for not placing them on the map.

Q. Well, had you had your attention called by the proper officials of the Forestry Service to make an examination of these trails?

A. Yes sir.

Q. But you didn't think is sufficiently important to make any ritten memorandum of your investigations of trails?
A. Well, I have some written memoranda on that subject in a ily diary which we keep.
Q. You have those, have you?
A. I have some data on those.
Q. Have you them with you?
A. I think so.

(Witness produces the data referred to).

Q. Did you use those data that are being looked up now of Mr. ench in marking these trails yesterday?
A. No sir.
Q. You think you marked them from memory?
A. Yes sir.

Q. From your knowledge of plats and maps would it be more fficult to locate a trail upon a plat of this sort than to locate the tions and quarters of surveyed lands?
A. The corner of a section might be located by approximation just easily as a trail; that is it would be no harder to locate a trail by proximation than it would be to locate a section corner by approximation.
Q. I didn't ask you about approximation.

Mr. WARD: Please read the question again.

Q. (Question read by stenographer.)
A. It seems to me I answered that question.
Q. So you don't care to make any further explanation of that?
A. If I understand your question clearly that answers it fully,— y answer.
Q. Suppose I asked you to locate the northeast quarter of section on this map, could you do it accurately?
A. Yes sir.
Q. Why?
A. Because the township records were taken from the records of e Land Office.
Q. And the map is a correct map?
A. Yes sir.
Q. And the sections correctly placed there?
A. Yes sir.
Q. And all you must do is to count the different sections and put e northeast corner of it on, so that is very easy, isn't it?
A. Yes sir.

Q. When you were there examining trails you probably noticed trails running up toward the northwest toward Carbondale, didn't you, down East Sopris Creek?

A. One trail was marked there.
Q. Did you notice other trails running down East Sopris Creek ward the direction of Carbondale?
A. No sir.
Q. You didn't?
A. No sir.

Q. There is a road that runs along down the direction of Sopris Creek—East Sopris Creek, down to Emma from Mr. Light's ranch; could you locate with any accuracy the curvings of that road on this plat?

A. Quite fully, because the road practically follows the course of East Sopris Creek.

Q. So, owing to the fact that it practically follows East Sopris Creek you could make a comparatively accurate plat of that road, provided East Sopris Creek is put on that properly?

A. I could draw an approximate location of the wagon road.

Q. Now, Mr. McLaren, if there should be a wagon road cutting diagonally across the hills more or less curving, as it must be in that mountainous country, in the general direction of Carbondale, but not following the creeks—over the hills, would that be more difficult to locate than a road following the creek, on this plat?

Mr. KNAEBEL: This is objected to as incompetent and utterly immaterial.

A. Since I don't know the location of the trail there, I
93 could not locate a trail with that map.

Q. Well, now, Mr. McLaren, as a matter of fact, just be fair about it, isn't it more difficult to locate a trail upon a map like this where the trail winds over the hills and there is no course or direction, than it is to locate a road that follows the creek?

Mr. KNAEBEL: That is objected to as containing the answer in itself, and incompetent.

A. Where it is a well known fact that the wagon road follows the creek, it is a simple matter to draw the wagon road in,—more simple than to draw in a trail cross he hills.

Q. And you knew that before you put the trails upon this, marked the trails upon this map, didn't you?

A. Yes sir.

Q. And you hadn't taken the precaution up to that time to make any plat, to mark trails on the plat to guide your memory in marking them on this map?

A. No sir.

Q. Isn't it possibly that you might have made some very serious mistakes as to the location of those trails from memory?

A. Not very widely mistaken; as I say, those trails are located by approximation.

Q. Would you say they would be out as much as a quarter of a mile?

A. Possibly.

Q. But you wouldn't consider that much matter,—a difference of a quarter of a mile?

A. No.

94 Q. But when you went to examine these trails where did you begin, what part of the country, up north of Mr. Light's ranch or down on the Forest Reserve?

A. I think we made trips from both ends.

Q. Where did you begin?
A. The first trip started in on the Forest, and came down.
Q. That day did you find a trail up on the Forest Reservation?
A. Yes sir.
Q. About where was that trail?
A. That was approximately in here, in Hay Park.
Q. The one given on the map as the most southerly trail, is it?
A. Yes sir.
Q. And that is the one you have marked there?
A. Yes, near the terminus of that country.
Q. How did you do, follow that trail down?
A. Yes sir.
Q. How far did you go upon it, quite close to East Sopris Creek?
A. Well, a distance of four miles.
Q. Did you examine the territory between the trail you have just now spoken of, and East Sopris Creek, for trails?
A. Yes sir.
Q. Did you find any trails in that vicinity?
A. There are a number of poor trails, cattle trails, over the country there, but not well defined, regularly used trails as this one is.
Q. There would be no difficulty for an experienced cow man to find the trail that you have just been speaking of, would it?
95 A. No sir.
Q. Is it a wagon trail, or simple a cow path?
A. It is what would generally be termed the "work trail"; I saw a wagon driving over a part of the trail from the southwest portion of Mr. Light's ranch up.
Q. Do I understand you to say that there are signs of wagons having been driven over and along this trail?
A. Over a part of that trail; I saw a young man, whom I understand is Mr. Light's son, coming down that trail with a load of wood, going through the fence there at the southwest portion.
Q. Where was he when you saw him?
A. He was going through where this trail comes down in the southwestern corner of Mr. Light's place.
Q. How far was he from Mr. Light's ranch when you saw him?
A. Entering the ranch.
Q. That is, when you saw him?
A. Yes.
Q. So he was driving over that portion of the trail that enters the ranch?
A. Yes sir.
Q. Now did you make any examination of these trails at the north end of Mr. Light's ranch?
A. Yes sir.
Q. Did you see Mr. Light's north fence there where it crosses the creek?
A. East Sopris Creek?
Q. East Sopris Creek.
A. Yes sir.
96 Q. How far up these trails from that fence where it crosses the creek?

A. They were right up to the fence.

Q. Now is your memory any poorer today than it was yesterday about these trails?

A. I think not.

Q. Can you tell me how the trails run from East Sopris Creek in reference to Mr. Light's north fence?

A. From East Sopris Creek?

Q. Yes, in reference to Mr. Light's north fence; they start there do they?

A. Yes.

Q. And they go down southwest?

A. A southerly direction from there.

Q. They start right from the creek, do they?

A. There is a trail along the north line of the fence there through the country, a wagon road, a wagon road runs along the course of the creek there.

Q. Is that trail marked on this plat?

A. The wagon road is marked there,—no sir, this trail connects with the wagon road very near the terminus of that trail.

Q. Where does the trail terminate; at the creek?

A. You might say there is no termination to these mountain trails. The main well defined trail comes from this road at this point approximately shown there running in a southerly direction.

Q. Did you stop at the north line of Mr. Light's fence on East Sopris Creek to examine the trails around the corner of that fence and down the creek?

A. Yes sir.

97 Q. And on your plat you have a trail leading from East Sopris Creek out there southwest. Is that trail the trail that you saw close to Mr. Light's north fence?

A. Yes sir.

Q. And your recollection is that that trail as far as East Sopris Creek is started there and run out southwest?

A. Yes.

Q. I suppose there is a well defined trail around the corner of Mr. Light's north fence there?

A. There is to this wagon road.

Q. Did you notice any trails running down,—you haven't one marked running about a little west there?

A. No.

Q. What is the character of the country there right immediately west of Mr. Light's north line of fence?

A. Immediately west?

Q. Yes.

A. It is very steep; the cover is oak, choke cherry——

Q. Is there not a sloping ridge running approximately west, sloping from the south to the north down lying west of Mr. Light's north fence?

A. Yes sir.

Q. The top of that is covered with oak scrub—and sides?

A. The sides are covered with choke cherries, service-berry bushes and oak scrub.

Q. And does the trail run over the top of that, or around the edge of that?

A. Neither; it follows between the top and the bottom around the side of the hill.

Q. Right on the side of the hill. That is a trail that runs approximately west and enters the Reserve from the south, that one you have reference to now?

A. No sir, there is no trail shown there on the Reserve,
98 entering the forest from the south. This case rests entirely upon that land north and east of the Holy Cross Forest Reservation.

Q. Now you have on the map a trail marked, running approximately southwest from East Sopris Creek north of Fred Light's land. How high up the hill does that run,—the hill which is the westerly boundary of East Sopris Creek gulch.

A. Your question is mistaken; you say the trail is shown as running from north of Mr. Light's ranch southerly and westerly.

Q. Yes sir, there is no such trail on the map.

A. Not as shown there.

Q. Now just from your recollection, you having placed these upon the map yesterday from recollection,—how many principal trails have you marked on that map?

A. I have shown two principal ones, with a third running from the corner and converging into this southwesterly trail.

Q. Now there is one more northerly than the other, is there?

A. Yes sir.

Q. Describe how that runs,—where it enters the Forest Reservation?

A. It runs in a westerly direction from the northwest corner of Mr. Light's place.

Q. How far from Mr. Light's fence?

A. Running right around the fence close to the fence; it follows along over to a small stream, for which I know of no official name; it follows that stream south into the forest.

99 Q. So that trail does enter from the south, doesn't it?

A. No, sir, it does not; it enters from the northwesterly of the Holy Cross Forest.

Q. You are right.

A. Certainly.

Q. Now the other trail which is over to the south from the one you have just described, how does that run, where does it begin with reference to East Sopris Creek?

A. It is shown on the map at——

Q. Tell me where it is from your recollection?

A. It runs from the south.

Q. Where does it begin with reference to East Sopris Creek from the north. Now do you understand my question?

A. Please state it again.

Q. You have said that there is another trail more to the south from the one you have just described, which leaves East Sopris Creek and runs in a general southwesterly direction into the Forest Reserve. Please describe that trail, beginning at East Sopris Creek.

A. Beginning at East Sopris Creek that trail runs in a south or southwesterly direction following very close to Mr. Light's west line fence, to a point where he joins Mr. Finley's fence; it converges there with another trail, and the two trails is shown as one on the map, continuing on up into the forest into Hay Park.

Q. Where does this trail begin, in reference to East Sopris
100 Creek, to the north of Light's ranch?

A. In reference to East Sopris Creek it begins at East Sopris Creek.

Q. In reference to Mr. Light's north fence where does it begin?

A. It begins at Mr. Light's northwest corner.

Q. In reference to his north fence where does it begin?

A. I don't know how I would give you a much more clearer answer on that. It begins, as has been stated several times, a short trail from this road to this northwest corner, the trail follows then as described.

Q. What do you mean by this northwest corner?

A. I mean the northwest corner of Mr. Light's ranch.

Q. Now where does this trail leave East Sopris Creek in the neighborhood of Mr. Light's north fence?

A. At the northwest corner of Mr. Light's ranch.

Q. Does East Sopris Creek run to the northwest corner, section corner of Mr. Light's ranch?

A. It does not miss it far.

Q. About how far would you guess?

A. Twelve or fifteen rods.

Q. Do I understand you to say that this trail leaves East Sopris Creek approximately close to where Mr. Light's north fence crosses East Sopris Creek?

A. Yes sir.

Q. Does it run along the fences between Mr. Light's ranch and the Forest Reserves along East Sopris Creek, or does it run up on the hill and over the hills?

101 A. It follows as near East Sopris Creek as it is possible to get because of the fences to the southwest corner.

Q. And how far does it go before it cuts over the hills?

A. It is following over hills the whole distance.

Q. Does it follow, leave these fences, I mean the fences of the other ranches below Mr. Light's; does it ever leave these fences any great distances; there is no trail described though as lying below Mr. Light's after it leaves Mr. Light's ranch it goes up over the hills into the forest reserve, is that right?

A. I think that you mean up above Mr. Light's ranch when you speak of these other ranches, don't you?

Q. Yes, I mean south.

A. You said below.

Q. Now the ranches above, that is, southwest of Mr. Light's ranch, have fences along them?

A. Yes sir.

Q. And does this trail run anywhere near these fences?

A. For a distance it does.

Q. About how far down?
A. How far up?
Q. How far up, how far south I should say?
A. Well, approximately a mile and a half to two miles from the beginning point as described.
Q. And then it cuts across the hill, does it?
A. It follows across the hills in a general grade; does not go directly straight up across the hills.

102 Q. Where does it enter the forest reserve in reference to where East Sopris Creek flows out of the forest reserve?
A. It enters it at a point considerably north.

(Photographs are here marked "A," "B" and "C" "Defendant's Proofs.")

Q. I hand you a photograph marked Exhibit C Defendant's Proofs; do you recognize that country?
A. Yes sir, I recognize the general locality.
Q. Do you see some fence posts in that picture over that small cliff?
A. I don't see a cliff in the picture.
Q. I have reference to this right here (indicating on photo).
A. I see something there that might represent fence posts, it is not plain enough to identify it as a fence.
Q. From that photograph can you see what country that is?
A. I am not quite sure, but it looks as though it had been taken from the north of Mr. Light's ranch.
Q. There is nothing in the exhibit that would enable you to locate Mr. Light's north fence, is there; you can not locate Mr. Light's north fence from this exhibit?
A. Not definitely.
Q. I hand you Exhibit number D. Do you recognize that fence, and where it is?
A. Well, there is very little of the surrounding country shown here, I take this to be a picture of the northwest corner of Mr. Light's place.

Q. Do you see on that photograph any indications of trails?
103 A. No sir, I don't think that is shown here.
Q. If that is a correct photograph of the north fence of Mr. Light looking southwest where should the trail be that leaves East Sopris Creek in that vicinity?
A. It should be just west of that corner.
Q. Just west of that corner?
A. Yes, sir.
Q. Where should it be where it leaves East Sopris Creek, near that fence where it leaves the creek?
A. A short distance from the corner of that fence.
Q. As much as a hundred yards?
A. I approximated that at twelve or fifteen rods, I believe.
Q. How many yards is that?
A. Five and a third yards to the rod, so that would be a hundred yards, or better; it would be a little less than that.

Q. So, then, you have marked upon your map from memory where that trail begins, and where it approximately ends in the forest reserve?

A. Yes.

Q. Now I hand you the map, Exhibit 1, and please tell me from that map where that trail leaves East Sopris Creek with reference to the section lines?

A. It leaves approximately close to where the section line crosses East Sopris Creek.

Q. How far is that from Mr. Light's north fence, as the map shows?

A. A very few rods.

104 Q. As the map shows.

Mr. KNAEBEL: Well, that is objected to because the map speaks for itself, a very few rods.

Q. That is what the map shows, does it?

A. Yes.

Q. What is the scale,—upon what scale is this map drawn?

A. An inch to the mile.

Q. What part of an inch is it from the north line of Mr. Light's land to where this trail leaves East Sopris Creek as marked upon the plat?

A. If you will give me a rule I will measure it (witness measures), quarter of an inch.

Q. Which way are you measuring, due north and south?

A. Measuring from Mr. Light's fence to that point.

Q. To what point?

A. To where this trail comes to Sopris Creek.

Q. And that would be a quarter of a mile according to the scale of the map?

A. Yes sir.

Q. So that your map is not correct as to where it leaves East Sopris Creek?

A. The map is correct, and the trails were put on there by approximation.

Q. So the trails are not correct?

A. The trails are approximately correct.

Q. Does the map show correctly where the trail leaves East Sopris Creek?

A. Approximately.

Q. Approximately; but does it show correctly?

105 A. It shows approximately correctly where the trail leaves East Sopris Creek.

Q. How far approximately correct,—a quarter of a mile?

A. Approximately a quarter of a mile from the north line of Mr. Light's fence.

Q. So the marking of the trail is not correct as to where it starts?

A. The marking of the trail is approximately correct.

Q. But is it correct?

A. It is approximately correct.

Q. That means it is not correct, is it. Are the other portions of that trail as approximately correct as the beginning of it?

A. Yes sir.

Q. More so, or less so?

A. I wouldn't say either way.

Q. Now you testified that where you have a creek to start from, and section also to start from, it is more easy to locate trails than roads?

A. Providing you are paralleling the stream.

Q. And where you have section lines and a stream at the beginning of the trail you have got it off from the proper location a quarter of a mile on the plat?

Mr. KNAEBEL: I object to that; there is no such testimony in the record; it assumes a falsity.

A. You haven't shown me the proper location according to your standpoint.

Q. Show me on that plat the particular place where that trail leaves East Sopris Creek?

106 A. That is already described and shown there as approximately correct.

Q. Approximately correct, but show me now the correct place, please.

A. Right there is approximately the correct place where this trail leaves East Sopris Creek.

Q. You told me it left East Sopris Creek close to where Mr. Light's fence crosses East Sopris Creek?

A. Yes sir.

Q. And that is a quarter of a mile southeast of that point you have marked on the map?

A. It is not the way I count directions.

Q. According to scale it is one-quarter of an inch on the map.

A. I wish to show here that the examiner is calling north "south" again; he is looking at the map upside down; this is north at the top of that map.

Q. Where on this map does the trail leave East Sopris Creek? Point it out.

A. Approximately there. (Indicating on map.)

Q. Approximately. You can not tell, though, where it leaves it. So you still insist that the trail leaves East Sopris Creek at the point where the division section line between sections 29 and 32 crosses East Sopris Creek?

A. I claim that that is the approximate location, yes, sir.

Q. Mr. McLaren, how are these trails formed by cattle, while going to water or coming from water?

A. Formed both ways at places.

Q. How are they generally formed?

A. Generally formed wherever cattle use them, whether

107 naturally drifting or whether being driven.

Q. When cattle are naturally drifting do they follow trails, as a rule?

A. Yes sir.
Q. Do they follow trails where they are grazing?
A. No sir.
Q. When cattle go to water do they generally follow trails?
A. Follow trails.
Q. When they return from water do they follow the trails or use the grass.
A. That depends on the location of it, for they go to grazing right near water if the feed is sufficient.
Q. Are the trails formed ordinarily by cattle going down hill or up hill?
A. From whichever way the cow travels.
Q. Ordinarily?
A. A cow would not travel up and down hill.
Q. So you don't know?
A. I do know.
Q. What is your answer?

Mr. KNAEBEL: The question is objected to as obscure and incapable of any sensible answer.

Q. Is that your answer, you don't know?
A. I do know.
Q. Can you tell by looking at the trails that you have described whether these trails were formed by cattle going up hill or coming down hill?
A. I can tell whether the cattle have gone up or down the trail, but whether the cattle have formed the trail by going up hill or down won't show in the trail.
Q. Can't you tell?
A. No trail is formed without stock traveling both ways.
108 Q. (Question read by stenographer).
A. You can not; there is no picture of the cattle on the trail.
Q. From your knowledge of catle grazing how do you think these trails were formed?
A. Formed by cattle traveling to and from the forest.
Q. There is feed all the way from East Sopris Creek to the forest reserve, isn't there?
A. It is very sparse.
Q. Is it any more sparse than north and northeast of Mr. Light's ranch?
A. No sir, I should judge not.
Q. Would you think that these trails were formed by cattle being driven from the forest reserve back to the direction of Mr. Light's ranch, or from cattle going from Light's ranch to the forest reserve?
A. I would judge the trails are formed by cattle traveling to and fro.
Q. You don't think that those trails were used by cattle to go to water?
A. No, sir, not from the situation of the water, I should say not.

Q. I think that you testified yesterday that there isn't much water between Mr. Light's ranch west of his ranch and the forest reserve?

A. Yes sir.

Q. So that the cattle would have to travel several miles across a territory with very little water in it?

A. That depends on where the cattle start.

109 Q. Starting from the north line of Mr. Light's ranch and going southwesterly along this trail they would have to travel several miles without water, wouldn't they?

A. At this time of the year there is very little water between the forest line and Mr. Light's ranch.

Q. Is there any objection to answering my question?

Mr. KNAEBEL: I object to the question because it is vague and indefinite as to the time and conditions of the year to which it refers.

Q. At this time of the year would they have to travel any distance without water?

A. Yes sir.

Q. And in June would they have to travel any distance without water?

A. If they started at the northwest corner and followed this trail without leaving it or being driven to the end of the trail, they would travel several miles without water.

Q. Can the cattle see the forest reserve from down East Sopris Creek.

A. I don't know whether a cow would recognize the forest reserve from East Sopris Creek or not, I should.

Q. Mr. McLaren, how much practice have you had in reading cattle brands?

A. I can not give you the exact number of days that I may have put in at it. I have read brands for a good many years, whenever I have been around with cattle.

110 Q. You spoke of riding through the forest reserve and seeing cattle thereon with certain brands on them. On the 5th of June you saw cattle with two kinds of brands. Did you notice those brands carefully?

A. I did; but I don't think that I stated that I saw two kinds of brands.

Q. I understood you to say that you saw cattle branded "Lazy V T" and "U Slash U".

A. I noticed those brands carefully at any time that I saw them.

Q. Did you see them that day, June 5th, cattle branded with those two brands?

A. That was the date upon which I had to refer to my notes yesterday, and my remembrance is fourteen head.

Q. Now is it possible for you to have made any mistakes about reading those brands?

A. No sir.

Q. On what part of the cattle was the Lazy V T brand placed?

A. The Lazy V. T. was on the right hip.

Q. And please mark again in the stenographer's book the Lazy V T brand which you saw that date.

(Witness marks Lazy V. T. brand as follows:)

Q. Do you think it is possible that you may have counted some of those cattle twice that day?

A. No sir.

Q. You didn't go over a very large territory that day?

A. Covered considerable territory.

Q. But you didn't go back over the same ground?

A. No sir.

Q. Were you on the forest reserve May 19th,—was it 1907
111 or '8?

A. I was not.

Q. You were not on the forest reserve?

A. No, sir, not in either year? You refer particularly to this locality?

Q. Yes. You were on the portion of the Holy Cross Reserve near Mr. Light's ranch on the 5th of June, were you not?

A. Yes sir.

Q. And what was the condition of the feed and grass at that time?

A. The feed within the forest was starting, was in good shape; cattle were *using* there through Hay Park through the timber, and some of the cattle were right up at snow line.

Q. And on September 6th you were on the same territory, were you?

A. Yes sir.

Q. What was the condition of the feed and grass there then?

A. It was very much worse.

Q. Very much worse?

A. Yes sir.

Q. Had it been eaten off?

A. Yes sir.

Q. How much of the range did you go over that day?

A. Which date?

Q. On the 6th of September of this year?

A. I should say that I rode twenty-five miles that day, covering the range.

Q. That was the day that you found eleven "U Slash U" and two "Lazy V T" cattle?

A. Yes.

Q. Did you look over any other portion of the unreserved range in the neighborhood of Mr. Light, either on the 5th of June or on the 6th of September of this year?

A. I did on the 5th of June, but not on the 6th of Sep-
112 tember.

Q. Did you see any of Mr. Light's cattle, or cattle marked "Lazy V T" or "U Slash U" on the unreserved range?

A. On June 5th I saw twelve head, I think it was, of "Lazy V T" between Mr. Light's place and the forest boundary around these bog holes that I have mentioned,—seep holes; there was a very small

upply of water there at that time, and a few cattle hanging around here.

Q. Did you see any of them north and northeast of Mr. Light's anch?

A. No sir.

Q. Were there any cattle up there that day that you noticed?

A. Not except where I have mentioned.

Q. You testified about examining the range north and northeast nd northwest of Mr. Light's ranch, and made a statement that a ertain portion of that range would only support about fifty or sixty attle. What portion did you have reference to, as far as this map concerned?

A. That would be this portion directly, right around in here indicating).

Q. Between what creeks?

A. Between East Sopris Creek and Roaring Fork.

Q. You made no examination of the range conditions west of East Sopris Creek that day, did you?

A. Yes sir.

Q. How far did you examine the range west of East Sopris Creek?

A. To the forest line, and within the forest.

13 Q. How far did you examine the range northwest from Fred Light's ranch beyond Sopris Creek?

A. Which direction do you call "beyond Sopris Creek?"

Q. Northwest beyond Sopris Creek. See, there is Sopris Creek; ou are familiar with the country there,—or did you examine that erritory?

WITNESS: Mr. Ward and I do not seem to get directions.

Q. I said northwest of Fred Light's ranch.

A. I never went beyond Sopris Creek.

Q. Do you know how far cattle may go upon the unreserved pub- c lands up the Roaring Fork Valley in the direction of Aspen, ow far from Mr. Light's ranch?

A. There is a road running from Mr. Light's ranch directly into spen; cattle can be taken the entire distance.

Q. I didn't ask you where they may be taken; I said how far attle may range upon the unreserved public land?

A. I beg your pardon, the question didn't read that way.

Q. (Question read by stenographer).

A. They may go directly into Aspen.

Q. I asked you how far, how many miles?

A. Approximately twenty miles, the distance is.

Q. Well, now, do you know how far it is, approximately, from Ir. Light's ranch to Carbondale?

A. About fourteen miles.

14 Q. How far is it possible for cattle to graze and range in a northwesterly direction from Mr. Fred Light's down the Roaring Fork in a northwesterly direction upon the unreserved pub- ic lands of the United States?

A. Owing to the fact that the Roaring Fork Valley and tribu- aries there is practically all taken up by settlers, and the fact that

each settler grazes his stock in the vicinity of his ranch, owing to the topography of the country there is no chance for Mr. Light's cattle to graze and get enough grass to support them in this direction.

Q. Did you understand my question?

A. I thought I did.

Q. I will ask it again. How far is it possible for cattle to graze and range upon the unreserved, unenclosed public lands of the United States lying in a northwesterly direction from Mr. Light's ranch?

A. It is not possible for them to graze in that direction owing to the reasons given.

Q. Are there any open, unreserved public lands of the United States lying northwesterly from Mr. Light's ranch?

A. Yes sir.

Q. To what distance may you go in a northwesterly direction and find these open, unreserved public lands?

A. Not having a plat of the entire country there which is patented I could not say.

Q. Could you give an approximate?

A. I would not make an approximation because this way east from Carbondale the valley is very well settled up, very thickly settled.

115 Q. According to your plat to what distance is it shown there in a northwesterly direction that there are open, unreserved public lands of the United States?

Mr. KNAEBEL: This is objected to because the plat speaks for itself.

A. Diagonally across one township and one section.

Q. Have you any objection to mentioning how many miles it is?

A. I can give you an approximation; I don't intend to figure this thing out in feet and inches,—approximately nine or ten miles.

Q. According to your plat. But does your plat purport to show all the unreserved, public lands in that vicinity?

Mr. KNAEBEL: We will stipulate that they run up to Kamchatka if you like; if you want a stipulation that will go up to Seattle we will give it to you, or Alaska.

Q. Is it not possible for Mr. Light's cattle to stray and graze from his ranch clean down to Glenwood Springs without getting on a forest reserve?

A. No sir, I should say not.

Q. Is it possible for Mr. Light's cattle to stray and graze from his ranch down to Cardondale without getting upon a forest reserve?

A. No sir.

Q. How far do you think it is possible for Mr. Fred Light's cattle to stray and graze in a northwesterly direction from his land without getting upon a forest reserve?

A. I cannot give you an approximation as to that distance.

Q. How far do you think they can go upon open public
116 lands, either reserved or unreserved, in a northwesterly direction from his land without striking fences?

Mr. KNAEBEL: This is objected to as obscure because it does not show whether it is intended to mean to go and find food as they go, or simply go.

Q. I said stray and graze.

Mr. KNAEBEL: You mean stray and graze, I wanted to understand it, that is all.

Mr. WARD: Yes, stray and graze I meant to say.

A. They may be able to go a distance of three miles or four miles.

Q. You think, then, they could not stray and graze much more than four miles?

A. No sir.

Q. Why not further than that?

A. You asked—your question was "on account of fences"; if you modify that and say that they can not stray and graze in that direction for lack of feed——

Q. Your answer is, then, on account of lack of feed?

A. To your last question, yes.

Q. Is there anything to prevent them going further if they could do without feed?

A. There are roads all through this country, cattle can go practically anywhere.

Q. They could go to Glenwood Springs?

A. On the wagon road,—railroad track.

Q. Could they get beyond the unreserved, public lands of
117 the United States?

A. They can by following the wagon roads and railroads, yes.

Q. Couldn't they get to Crystal River from Mr. Light's ranch without trespassing on the forest reserve?

A. No sir.

Q. You think not?

A. No sir.

Q. Could they get up as far as Aspen without trespassing on the forest reserve?

A. Will you modify, please, the question as to whether you mean can they go up a wagon road into Aspen or——

Q. I mean can they walk and graze and stray up in a southeasterly direction towards Aspen, as far as Aspen, without getting upon the forest reserves?

A. No sir.

Q. How far can they go from Mr. Light's ranch in the direction of Aspen by straying and grazing without trespassing on the forest reserve?

A. It is an impossibility for them to stray and graze in that direction.

Q. Why?

A. Owing to the topography of the country and scarcity,—lack of feed.

Q. And that scarcity of feed extends both northeasterly up the Roaring Fork—I mean southerly up the Roaring Fork—and northwesterly down the Roaring Fork, there is that same scarcity of feed?

A. Northwesterly down,—yes, sir.

Mr. KNAEBEL: May I ask if these questions are referring to the vacant, unoccupied, unentered land?

Mr. WARD: Yes, unenclosed land.

118 Q. You think the open range in the neighborhood of Mr. Light's ranch, the open unreserved range, would support how many cattle throughout the season, that is the range available to Fred Light?

A. Possibly fifty or sixty head with proper handling might be pulled through there for the summer season. As a range it is absolutely worthless to stock men.

Q. Do you figure that the territory northwest of Sopris Creek could support any cattle, the unenclosed, unreserved lands?

A. If you could hold them on the side of the hill they could get some feed there.

Q. How many cattle do you think that territory—as far as Mr. Light's cattle could go—would support northwest of Sopris Creek?

A. Northwest of Sopris Creek,—I will make no approximation on that part of the country.

Q. But you think that is no better?

A. This range northwest of Sopris Creek is not available to Mr. Light's cattle, it is clear out of the district where his cattle would range.

Q. Why not?

A. The country is taken up with patented lands and ranches; each man has cattle of his own which he turns out and grazes on lands contiguous to his own. The further fact which warrants this statement is that ranchmen even this far out take up permits because their stock drift into the Holy Cross Forest from those points.

119 Q. Is it not a fact that if the cattle of the ranchmen you have just referred to, graze in the Holy Cross Forest Reserve, that there will be that much more grass left on the unreserved public lands?

A. No sir, the range lower down is earlier, as any one knows; those cattle are turned out there just as soon as it is possible for them to get the benefit of what range there is; they use that range to the limit.

Q. They eat it all up, then, before what time of the year?

A. The cattle drift from this locality here—township 8, south range 87 west; the cattle drift up into the forest there as early as June or July.

Q. Does the grass grow on that range any more after June?

A. It grows some more after June but begins to get very dry there—scarce.

Q. It is a blue-stem mostly, is it?

A. Yes sir.

Q. And it gets dry as the summer time comes on?
A. Yes sir.
Q. And the range becomes very poor for cattle?
A. Yes sir.
Q. And dry blue-stem is not very good feed, is it?
A. It furnishes good nourishment for cattle when it is in good condition.
Q. What is the best feed for cattle—blue-stem?
A. Blue-stem—plenty of it.
Q. What is the best, green blue-stem or dry blue-stem?
A. You don't find dry blue-stem cattle will eat——
120 Q. I mean blue-stem that is not green?
A. I never have seen it dry fit for food.
Q. Only the green blue-stem is fit for food for cattle?
A. Yes sir.
Q. And as soon as the blue-stem loses its greenness and freshness and begins to get cured, with seeds on it, then it is not fit for cattle. Is that your opinion?
A. My opinion is that I never seen on the range blue-stem that was dry, that was fit for feed; green only is good for nourishment.
Q. It only has nourishment when it is green?
A. Yes sir.
Q. And in July and August it is not fit for food for cattle?
A. You can not find it.
Q. Well, is it fit for feed if it should be found?
A. If you should find it in proper quantities it might do.
Q. But it is not as good for cattle fodder?
A. No sir.
Q. Now how far may cattle graze on a range away from water and not be damaged by taking a long trip backward and forward each day for water?
A. That depends wholly on the topography of the country. In ordinary cattle grazing countries cattle should not go to exceed a mile; that is a considerable distance.
Q. That is, ordinary countries, out on the plains here?
A. No sir.
Q. What do you mean by "ordinary countries"?
A. Ordinary grazing countries, which we have within the Holy Cross Forest, and such country as exists in this vicinity.
121 Q. They ought not to go more than a mile?
A. No.
Q. Do you think if a cow would have to go as far as two miles for water each day it would be harmful to the animal?
A. It certainly would be harmful for the animal.
Q. Have you ever known in your experience in handling cattle where cattle would have to go as far as two and three miles for water?
A. No, I can say that I have always happened to be in well watered ranges.
Q. Isn't it a fact that a cow can go six to eight miles to water without harming it?

A. And return?

Q. Yes.

A. No, sir, not even go six or eight miles, without the return, it would damage the animal.

Q. You know nothing about the water conditions in the eastern part of Colorado, do you?

A. Yes sir, some.

Q. In the eastern part of Colorado, on the plains?

A. Southwestern part that is down by Huerfano County.

Q. Do they raise cattle down there, or mostly sheep?

A. Mostly cattle.

Q. You never saw any cattle down there go as far as four or five miles to water, have you?

A. Yes sir, I have known of their going that far; I never happened to be with them. They used to run in the country as far as that; I saw fifteen or twenty years ago Texas cattle, they were like deer.

Q. Mr. McLaren, you spoke about this country north and
122 northeast of Mr. Light's ranch as being of what character of country with reference to topography?

A. North and northeast of Mr. Light's between East Sopris and the Roaring Fork?

Q. Yes.

A. For some distance north of the patented lands along the Roaring Fork——

Mr. KNAEBEL: North of the patented lands?

WITNESS: South.

(Witness continuing:) —the mountain is high and steep and precipitous; it is inaccessible to man getting up and down there.

Q. From which direction?

A. From the Roaring Fork south.

Q. Now as to Mr. Light's ranch, how is the country, sloping,—as to the accessibility of it?

A. When you get to the top of this high mountain the slope is toward Mr. Light's place, or to the south and southwest. The eastern portion of this public land shown here is also cliffy and precipitous, covered with cedar and piñon,—sort of gypsum character, I should say, with practically no forage of any sort on it. The western portion of this strip here is even more rocky, cliffy and precipitous than the eastern portion. It is composed of red sandstone cliffs which stand up there to a considerable height. That class of country follows eastward until you get almost as far east as Mr. Light's place; it has some piñon and cedar on it, and some little scrub oak, and there is practically no forage of any sort there.

Between these two points mentioned where the cliffs are,
123 there is a rolling country, part of which is cut up by long and pretty steep gulches, pretty deep gulches.

Q. And it is easily accessible to cattle grazing?

A. It is not particularly hard to get cattle up there by following along the bottoms of these gulches and side hill trails.

Q. There are precipitous gulches and side hills there?

A. There are on these two extreme ends.
Q. And how about in between?
A. In between it consists of a more rolling country.
Q. And did you say there are a number of deep gulches and precipitous?
A. Not precipitous.
Q. But difficult for cattle to graze on it?
A. No, the country—there will be a steep hill opening up on a mesa, and maybe another steep hill and you will find places where cattle can graze.
Q. As compared with other portions of cattle ranges you have seen is that extraordinarily inaccessible to cattle, or is it about the average in that country?
A. About the average in a small area there.
Q. It is about the average of the western slope cattle country, is it?
A. As to accessibility?
Q. And topography through the country?
A. Yes sir.
Q. So there is nothing in the topography to interfere with the cattle going up there and eating.
124 A. In this particular locality that I have described it is not wholly inaccessible to cattle.
Q. Well, is it a difficult country for cattle to graze in?
A. I have answered that about three times. It is the average cattle range there.
Q. Well, can you answer it yes or no? That is the reason I ask you so often for it; if not, say not.
Q. Will you kindly give me your question again?
Q. Is it a difficult country for cattle to graze on?
A. Yes.
Q. I hand you Exhibit B., a photograph. Do you recognize that tract of country?
A. This scene evidently represents the wagon road; the section of wagon road between Mr. Light's ranch and the Emma.
Q. Does that resemble in general resemblance the western boundary, or southwestern boundary of the country you have just spoken of?
A. Yes, it represents the portion of the country road, along the wagon road on East Sopris Creek.
Q. I hand you Exhibit E., and do you recognize that locality?
A. Yes sir.
Q. What house is that down there on the foreground?
A. It is Mr. Light's house.
Q. Can you judge from the photograph the directions of the compass? You are looking in what direction, as it appears to you?
125 A. The photograph does not set square with the points of the compass, I should say; this road would represent approximately an east and west position on the map.
Q. Well, that has the appearance of being a photograph of the territory northeast of Mr. Light's ranch, has it not?

A. Yes it covers——
Q. It has that appearance?
A. The northeastern part.
Q. Can you say, by the aid of that photograph, whether the mountain side in the back ground is the middle territory you have just been describing?
A. I can pick out the territory.
Q. From that photograph?
A. Yes.
Q. Now what territory is at the extreme right of this photograph?
A. This cliffy, gypsum substance of which I have spoken.
Q. That is the extreme right?
A. It does not show on this photograph, the distance.
Q. You don't see any cliffs, or gorges or gulches in that photograph?
A. One can recognize here that there are rugged places if you are familiar with mountain photographs. Here is a high ridge which in this picture appears flat.
Q. I hand you Exhibit A. Do you recognize that territory?
A. I don't recognize it off-hand, no sir.
Q. You don't recall that view very clearly at this time, do you?
A. I felt confident of the locality, however ,not definitely sure until it was explained where the picture was taken.

Q. Now if this is a photograph of the country looking
126 southwesterly towards the Holy Cross Reserve, taken from the hill above Mr. Light's house showing in the foreground the Finley ranch, is it possible for you to locate approximately the trail, the most southerly trail that you have marked upon your plat?
A. No sir, it does not go into detail enough to show the trail.

Redirect examination.

By Mr. KNAEBEL:

Q. Will you state whether the brand of Mr. Light which has been referred to as a "Lazy V T" is not sometimes placed on the animal in the form with the "V" and the "T" reversed as to order?
A. Yes sir.

Mr. WARD: We object, for the reason that it is leading, and we move to have the answer stricken.
Mr. KNAEBEL: Will you admit this on the record?
Mr. WARD: I want this witness to testify, not you.
Mr. KNAEBEL: I say will you admit it on this record?
Mr. WARD: No, sir, I want the witness to testify.
Mr. KNAEBEL: Do you want me to prove it by other witnesses?
Mr. WARD: We admit that it is possible for some of these cattle to have been branded wrong instead of right, that is, branded "T V" instead of "Lazy V T."

Q. From your observations and knowledge of this range upon the vacant lands approachable from Mr. Light's ranch, can you state whether or not Mr. Light has customarily had the monopoly of

the use of those ranges in the spring time, or have others likewise used them?

127 Mr. WARD: We object to the use of the word "monopoly" in the question, as it states a conclusion of law.

A. The range is not used by Mr. Light exclusively; a number of other people use the range,—of settlers there; it is a common custom to turn out early in the spring and get all the early grazing possible.

Q. Irrespective of the drying of the blue-stem, what becomes of the grazing upon that range each year in the spring, for fodder?

A. The fact that cattle are turned out low down and eat it off tends to do away with the reproduction, and it dries up and disappears later in the summer.

Q. This season was it wetter or dryer that last season?

A. This season it was wetter.

Q. And the effect upon the grass in that vicinity was what?

A. It had the effect of keeping it green longer, making a better range.

Q. This year?

A. Yes sir.

Q. And more so than usual?

A. More so than usual,—a better late range than ordinarily.

Mr. KNAEBEL: That is all.

W. S. COPELAND, a witness produced on behalf of the complainant, being duly sworn testifies as follows:

Direct examination.

By Mr. KNAEBEL:

Q. Your full name, residence and occupation?

128 A. W. S. Copeland; residence Aspen, Colorado; manager of the Taylor & Brunton interests there.

Q. Mining interests?

A. Mining and farming.

Q. You have been in the cattle business, have you, during your life?

A. Yes.

Q. Are you acquainted with the defendant Fred Light?

A. I am.

Q. Have you ever heard the defendant discussed, his relations with the forest policy and forest reserve?

A. I have.

Q. Now you will please state when and how?

Mr. WARD: We object to the question that it is indefinite; gives room for any sort of an answer, and uncertain, and therefore incompetent.

A. I have heard Mr. Light on different occasions speak of his relation with the Forest Service.

Q. Now you will please state the first of those occasions, when it was, and where, and what Mr. Light said, if anything, about whether

or not he would comply with the regulations of the Agricultural Department with respect to the pasture of his stock upon any forest reservation?

A. The first time that I recall of a discussion upon that matter was in my office, and I don't think that that phase of it came up.

Q. What did Mr. Light say about it at that time.

A. The general trend of the conversation of those present was as to what our attitude would be for the establishment of a forest.

129 Q. Was that before the Holy Cross was established?

A. About the time of the establishing, as I recall.

Q. You were both, then, connected with some stock association?

A. We were.

Q. What association was that?

A. The Roaring Fork and Eagle River Association, I think,—I am not sure whether that is the appropriate name, or Roaring Fork and Eagle River Stockgrowers' Association, I think; the words may be wrong, it may be Livestock, I am not sure.

Q. And what year was this?

A. I am not sure; it was about the time of the establishment of the forest; it would be in 1905 or 1906, I fancy.

Q. Was it before or after the regulations as to taking out permits that had been put in force with respect to that reserve.

A. This conversation was before either of us had any knowledge of the regulations, as I recall it. I don't think that it was about the time of the establishing of the forest, the conversation to which I refer, but our attention was called to it and we had a conference, several of us, as to the probable effect in our locality.

Q. Did Mr. Light express his attitude at that time?

A. As I recall it, he was in doubt the same as others.

Q. Can you say what the substance of his remarks was upon that subject?

A. The substance of all that conversation at the time was that we were all in doubt as to what——

130 Q. As to what you would do?

A. I don't think the question of cattle grazing came up, it was the question of the general relation, what the effect of this forest reserve would have upon the community, especially upon the stockgrowers.

Q. Now what was the next occasion at which Mr. Light was present and at which anything was said by him concerning the grazing of his cattle upon the forest reserve?

A. If my memory serves me right it was a gathering in the district court room in Aspen.

Q. In what year, about?

A. Well, in whatever year that was; I don't keep track of rain storms or meetings accurately, but it was after this meeting in my office.

Q. Was it before or after the Department——

A. Mr. Light says it was that evening; it was subsequent to the meeting in my office.

Q. Was it before or after permits had been required for the Holy Cross?

A. I think before.

Q. Now state what occurred on that occasion?

Mr. WARD: We object to this testimony and ask that it be stricken out, both as to the second and first conversation on the ground that all of these happened before there was any establishment of rules and regulations therefor, and therefore is incompetent, irrelevant and immaterial.

Mr. KNAEBEL: Counsel for complainant states that this is only introduced as the beginning of an attitude and a course of conduct on the part of the defendant which will be proven to have continued to the present time.

131 A. There was a general discussion of those present as to the probable effect of the establishment of this forest reserve; it was a new thing in our locality.

Q. Who were present; what class of men?

A. A gathering of representative business interests of that community.

Q. Now what, if anything, did Mr. Light say, or how did he express himself?

A. As I recall it he expressed doubt as to its being beneficial to the livestock interest, and timber interests.

Q. Is that all?

A. At that stage we were all in doubt, and I don't recall a specific statement.

Q. Have you ever heard Mr. Light express himself adversely to the forest policy of requiring permits for grazing?

A. I have.

Q. Now please state the first of those times,—when?

A. I doubt if I could state when; it has happend many times but I doubt whether I could state the first, or the second or third time.

Q. State if you please in your own language, as nearly as you can, the places and the occasions, and what was said?

A. I recall different conversations.

Q. Give them all, please; give them all in order.

A. I doubt if I could give them in order.

Q. Well, give them all as nearly as you can?

A. I recall conversations, now I don't claim that they are chronological, but I recall conversations in Aspen, in Basalt, in Carbondale, but as to the order in which they came——

Q. What conversations?

132 A. Bearing upon this matter of permits and the Forest Service.

Q. Conversations between whom?

A. Myself and Mr. Light, and in public gatherings.

Q. When he was present?

A. When he was present.

Q. Now please state what attitude Mr. Light expressed on those occasions, what he said, as nearly as you may?

A. Mr. Light was decidedly opposed to the grazing feature, and the operation of the Forest.

Q. What did he say, if anything, as to what his own course would be respecting the application for a permit for his own cattle?

A. That he would not make application for a permit.

Q. Now how often have you heard him say such a thing as that?

A. Many times.

Q. During what year?

A. 1907 distinctly, but I would have to look at data as to some of those meetings to know the exact date.

Q. I don't care for the exact date.

A. In 1906 or 1907 particularly.

Q. Any time in this year since the filing of this suit?

A. I don't know when the suit was filed.

Q. On April 7, 1908.

A. I don't recall any specific instance this year.

Q. Well, now——

Mr. WARD: We object to all the testimony so far given, and move that the same be stricken from the consideration of the court, on the ground that all of this is admitted by the defendant in
133 his pleadings.

Q. Did you attend the so-called public land conventions in Denver in June 1907?

A. I did.

Q. Do you know whether Mr. Light attended that, or came down to Denver at that time?

A. He did.

Q. Were you on the same train with him?

A. I was.

Q. Did you have any conversation with him on the train about forest reserves?

A. I did.

Q. What was that conversation please, the substance of it.

A. The substance is what is asked for?

Q. Yes sir.

A. In the evening coming down in the smoker of the Pullman this matter came up for discussion with reference to the forest service, and this land meeting. Mr. Light said that he had been expecting a clash. Now these may not be the words, but this is the substance—I don't pretend to — the *the* words of this conversation, but pretend to give the substance of the conversation—a clash with the Forest officers as to the grazing of his cattle; that he had——

Q. On the reserve?

A. On the reserve. That he had been served with notice to remove them or take out a permit; that he had expected the matter to come to a head but that just recently he had had a ten day extension given him which would carry the matter over the time of the land
134 reserve; that, anticipating this trouble that he had prepared for it and been named a Deputy Sheriff in that county and that he was prepared to defend the moving of those cattle.

Q. Did he then state, in substance, that he would resist their removal?

A. He said that he would treat any one attempting to move them, that is, forest officers or any one attempting to move the cattle, in the same way he would any other cattle thief.

Q. From where?

A. The national forest; it was called the Holy Cross Reserve at that time.

Q. And in that conversation he admitted, did he, that they were on the forest at the time, the cattle?

A. I think so.

Q. That was the assumption of the conversation was it?

A. He said that he had received notice to take them off the reserve but there had been an extension given.

Q. What did he say?

A. He said if the officers attempted to move the cattle that he would treat them just the same as he would any other cattle thief seen handling his stock on the ranch.

Q. Now was this remark made right in conjunction with the statement that he had been appointed a Deputy Sheriff?

A. He said that he had—perhaps these are not the words—he had taken the precaution to be named a Sheriff to be prepared for this emergency. That was the thought in connection with it.

Q. Was it only by that implication, or was it in a direct
135 reference to the use of fire arms?

Mr. WARD: We object to the leading questions.

A. As I recollect it he said he was prepared to—that he had been appointed Deputy Sheriff, and he was prepared to defend,—see that those cattle were not moved by a forest officer any more than any other cattle thief.

Q. You don't recall, then, whether there was any direct mention of shooting, or use of fire arms?

A. I don't recall those terms being used.

Q. But what would you say in respect to the meaning of the entire conversation in that regard; the impression that was left upon your mind by the entire conversation?

A. I certainly understood——

Mr. WARD: We object to the witness giving his impression; let him state the substance or the words as nearly as possible and leave the impression out.

Q. Answer the question.

A. I understood that if the forest officers attempted to move those those cattle it would be a question of whether Light got them or they got him.

Q. And when you say you understood it, do you mean that that was the substance of the conversation?

A. That was the substance of the conversation as it impressed itself upon me.

Mr. WARD: We object to the entire foregoing testimony in refer-

ence to the conversation on the Pullman sleeper for the reason
136 that the same is incompetent, irrelevant and immaterial, and was not in any manner communicated to the officials of the Government.

Q. Now, Mr. Copeland, I will ask you to state whether you have ever heard Mr. Light use any endeavors to persuade other people to abstain from taking out permits for stock upon this and other forest reserves, and if so, when and under what circumstances?

A. At different times groups of men standing on the street, and specifically at the meeting in Carbondale, the organization of which he is President.

Q. On these different occasions state what he would do, what he did and said on that subject,—the substance of it?

A. The substance of it was that if we stayed together and did not take out the permits, and would not take out the permits, that we would win out against Uncle Sam, that the grazing feature would eventually be wiped out.

Q. Did he, or did he not, advise others what to do in respect to permits?

A. He advised.

Q. And what did he advise?

A. Not to make application for a permit.

Q. Now let us get into the character of this meeting that you spoke of; what was it?

A. A meeting of the Association referred to, a called meeting.

Q. At what place?

A. The one I have had in mind now is Carbondale.

137 Q. When was that?

A. That would be,—it was following the land meeting.

Q. In 1907?

A. Either late in 1907 or early in 1908; I could tell by looking up my diary.

Q. Have you that here?

A. I have the 1908, but I think the only meeting following that land meeting; I know that it was subsequent to the land meeting.

Q. Well, that is near enough. Now who were present; how many persons and what character of persons. I don't care about the individual names.

A. I would say from—well, those present, do you mean, those who had a vote in the meeting?

A. No, in the presence and hearing of Mr. Light.

A. I would say there were forty or fifty people, at least.

Q. What character of people—their avocations?

A. Stockmen, members of the Association and representative business men of that vicinity.

Q. Vicinty of Carbondale?

A. Yes sir.

Q. How far is that from your place, approximately?

A. I don't know what the miles would be, I suppose twelve or fifteen miles, but I am not sure.

Q. Were those men the inhabitants of that valley—Roaring Fork and Sopris, that vicinity?

A. In general terms, yes.

Q. What did Mr. Light say, in substance?

138 A. He referred to what he considered the abuses of the stockmen, and timber, and farmers in the timber—proposition of gathering wood and the handling of stock as we had heretofore.

Q. He told a tale of woe in that regard, did he? Now what did he say as to the obedience of the regulation?

A. He said he had not taken out a permit and would not, and advised others to stand together on that proposition.

Q. Did you attend a stockmen's meeting at Basalt February 23, 1907?

A. I think not.

Q. You will state if you please whether it is or is not a matter of public notoriety in the Roaring Fork Valley and vicinity, that Mr. Light has taken this position adverse to the forest's interests?

A. It is thoroughly understood that way.

Q. And what is the general knowledge or reputation there with respect to his own conduct in regard to taking out permits?

A. It is understood that he has not taken out a permit.

Q. And is there any general knowledge or reputation concerning his attitude for the future in that regard as to what he intends to do, or intends not to do?

A. So far as I know only by past action.

Q. Well, this that I am now inquiring about is a matter that has, or has not come to your knowledge through report from other people and hearing others talk about Mr. Light, and what he said, and what he is going to do, as well as what he has done?

139 A. I am not sure that I catch the full meaning of your question.

Q. I mean have you heard many people speak in that vicinity of Mr. Light's attitude and his refusal and determination not to comply with the regulations in the future?

Mr. WARD: We object to the question as leading.

A. Mr. Light's attitude on that question is thoroughly understood in all that vicinity.

Q. And how do you know that?

A. By his having told us in private and in public.

Q. Often, or seldom?

A. Often last year, not so often this.

Q. And is your knowledge as to the notoriety of his attitude derived at all from what you hear other people say?

A. Partly.

Mr. KNAEBEL: That is all.

(Witness excused.)

HARRY H. FRENCH, a witness produced on behalf of the complainant, being duly sworn testified as follows:

Direct examination.

By Mr. KNAEBEL:

Q. Your full name?
A. Harry H. French.
Q. You are Supervisor of the Holy Cross Forest?
A. Yes sir.
Q. How long have you had that position?
A. Since September, 1906.
Q. When was that reserve created?
A. In August 1905, the proclamation was signed.
Q. And you live at Glenwood Springs now, do you?
A. Yes sir.
140 Q. State in what places you have resided for a number of years past, say ten years past?
A. In Eagle County, Colorado.
Q. Continuously?
A. Yes sir, up to the time I entered the Forest service.
Q. What was your business before you became connected with the Government?
A. Ranchman and cattle raising.
Q. How long have you been in the cattle business?
A. About eighteen years.
Q. In what part of Colorado?
A. In Eagle County.
Q. While engaged in that business did you make a study of cattle, their habits, and the ranges?
A. Yes sir.
Q. And the value of grasses, and the necessities of cattle from the standpoint of fodder and water?
A. Yes sir.

Mr. WARD: We object to the question as leading.

Q. Since you have been connected with the Government as Forest Supervisor what, if any, attention have you paid to cattle, and the cognate matters of feed and water, and cattle habits?
A. It becomes my duty as Forest Supervisor to make an examination of the range in order to make recommendations regarding the number of stock that should be allotted to the range within the boundaries of the Forest over which I have supervision.
Q. Do you know the defendant, Fred Light?
A. I do.
Q. And you know his ranch, where it is?
A. Yes sir.
Q. Please look at that map, Exhibit 1. Have you exam-
141 ined that before?
A. Yes sir.
Q. State whether or not it is correct?

A. It is; it is taken from the records of the Land Office at Glenwood Springs.

Q. Does it represent the situation as you know it upon the ground?

A. It does.

Q. Roughly speaking, how many times have you been to Mr. Light's place.

A. Do you mean at his ranch, or in the vicinity of it?

Q. At and in the vicinity of his ranch?

A. Not less than eight times.

Q. And in the Forest Reserve, in the portion of it appearing upon that plat?

A. I have been on that range a number of times.

Q. Have you examined it carefully?

A. Yes sir.

Q. Have you made any examination of the vacant public lands in the vicinity of Mr. Light's place, extending beyond that between his place and the Forest and to the northeast, and north and northwest of his place?

A. I have.

Q. For what purpose?

A. To determine the range, that is, the condition of the range, and also to determine the stock running on that range.

Q. When did you make such examination?

A. In June 1907. Do you want me to give the exact dates?

Q. Well approximately.

A. Also in May and June and September 1908. I want to make a correction; I said June 1908, and I meant June 1907.

142 Q. You examined it in June of each year, did you?

A. Yes sir, 1907 and 1908.

Q. Assuming that Mr. Light or any one else were to turn a considerable herd of cattle, say 100 or 150 head, on to the vacant public land lying to the northeast of his ranch where it is marked on that plat, what, in your opinion, would become of that herd, where would it ultimately go toward the grazing season if they were turned loose at the time in the Spring when cattle are customarily turned loose by ranchers in that vicinity?

Mr. WARD: We object to the question upon the ground that witness has not sufficiently qualified to answer the question.

Q. Do you understand the question?

A. Yes sir. From my experience in stock, if they were turned loose on this range northeast of Mr. Light's ranch in the early spring, by the middle of June, or latter part of June, the majority of that stock would be on a high range, which is now in the Holy Cross Forest lying west and southwest of Mr. Light's ranch.

Q. You will state your reasons for that conclusion?

A. For the reason that the range to the east and northeast of Mr. Light's place would be available for grazing only in the very early season; it is not well watered, and the character of the soil is such that it dries up very early, therefore the cattle would have to necessarily drift to higher range in order to find better forage.

143 Q. Do you know what the practice of the other ranchmen who are Mr. Light's neighbors, has been in the past three years as to the turning out of their cattle?

A. Yes sir.

Q. State what it has been?

A. Their cattle are turned out in the vicinity of Mr. Light's ranch on the lower range as early as the feed is sufficient to support the stock.

Q. When you speak of the lower range you refer, then, to what?

A. To the range contiguous to Mr. Light's ranch.

Q. That range which appears on Exhibit 1 as vacant public land outside of the Reserve?

A. Yes sir.

Q. What is the fact as to the time when grazing may go on in that locality on that range, as compared to grazing in the Forest?

A. Much earlier.

Q. For the reason that the Forest covers land that is considerably higher, and rising? Is that a fact, Mr. French?

A. Yes sir.

Q. Are there many persons who have taken out permits through you for the pasture of their stock within the Holy Cross Reserve, whose stock are turned out at or near the ranch of Mr. Light, in that vicinity?

A. Yes sir.

Q. And what has been their practice in respect to the turning out of their stock each year?

A. They would turn them out on this lower range.

Q. How did you learn that?

A. I saw two bunches of cattle turned out this spring.

144 Q. Well, I ask you if you have any knowledge through reports made to you officially by the rangers, in respect to the turning out of stock?

A. Yes, sir, stockmen notify the rangers.

Q. And they notify you, do they?

A. Yes sir.

Q. Is there any one in that vicinity except Mr. Light who has not taken out a permit? Light and his son?

A. No sir, not to my knowledge, that has stock.

Q. Now state, if you please, whether any of these persons have ever found it necessary, to your knowledge ever found it necessary to drive their stock on to the Forest in the Spring?

A. No sir.

Q. What do they do, or have they done in the past three years?

A. The stock naturally drift to the higher range. Of course there are some stragglers that will have to be driven up, that is always the case.

Q. Then, as a general proposition, is it true that all of the cattle around Mr. Light's place except his are cattle that are permitted to go by license of the Government on the Holy Cross Forest?

A. Yes sir.

Q. And how do those cattle reach the forest each year, by driving, or following their own inclination?

A. By grazing, and drifting up to the higher range gradually.

Q. What is the result upon this lower range, or vacant public lands which Mr. Light claims to use, of this general practice of using the same which is participated in by all the others; what is
145 the result upon the grass?

A. The result is that the grass is eaten off.

Q. How early in the year?

A. It begins to get short by the middle of June.

Q. What happens to it later on?

A. It dies down, dries up; the snow goes off much earlier in this lower country.

Q. Then what is the value of that lower range by the end of June, for cattle?

A. Of very little value.

Q. Suppose one hundred and fifty head of cattle were turned out by Mr. Light from the northeasterly side of his place, and kept upon the vacant public lands lying to the northeast, this lower range of unreserved lands generally; how would they have to be——

A. They would have to be herded there.

Q. Why?

A. On account of the scarcity of feed and water.

Q. And what would happen to the cattle if they were herded?

A. They would be in a very poor condition at the end of the season.

Q. Did you hear Mr. McLaren's description of that vacant land to the north, northeast and northwest of Mr. Light's between the Roaring Fork and East Sopris?

A. Yes sir.

Q. Now state whether or not that description was substantially correct, in your judgment?

A. Yes it is.

Q. You have been all over that land haven't you?

A. Yes.

Q. And what proportion of it is to be considered as an accessible range for cattle that were turned out from Mr. Light's ranch?
146 A. You speak of all of the unreserved land?

Q. Between those two rivers.

A. Between Capital Creek and East Sopris?

Q. Yes,

A. That is, the character of the country is such that cattle can graze on there,—it is not inaccessible.

Q. You mean it is not impossible for cattle to graze upon it?

A. It is not impossible for them to graze upon it.

Q. But as to water and grass, what do you say of it?

A. The forage is poor; the stock would have to go to either East Sopris or Capital Creek to get water.

Q. How would they reach Capital Creek?

A. By traveling over the road part of the distance,—county road.

Q. Well, would there be any fences in that direction?

A. Yes sir.

Q. If they got away from Capital Creek would they be in the vicinity of any good range?

A. No sir.

Q. Where would they have to go for food?

A. They would have to return to this range, or follow up Capital Creek on the county road quite a distance,—several miles.

Q. And in that event where would they finally come?

A. They would get on to the forest. There is very little open land between Capital Creek and the Forest.

Q. When does the grazing in the Forest begin to get good,—in this vicinity I mean?

A. The grazing was fairly good by the 5th of June this
147 this year—1908.

Q. After that time how does it compare with the grazing in the open range below?

A. It is a better range after that,—later in the season.

Q. Well, how much better?

A. Well, considerably; I don't know just how much it is stated.

Q. Do you notice on that map indications of two trails with a connecting trail between them?

A. Yes sir.

Q. What if anything, do you know about the existence of such a trail as that?

A. I know that there are trails on that range as shown on the map.

Q. Are they well worn trails, or otherwise?

A. They are well worn.

Q. Have you any opinion as to how they were formed?

A. By the passing of cattle over the range.

Q. State if either of those trails leads into the forest?

A. Yes sir.

Q. From your own knowledge?

A. Both of these trails, as shown on the map, lead to the forest.

Q. And state if either one of them begins, or passes close to Mr. Light's place?

A. The trail here as shown on the map, the one farthest——

Q. I don't want your testimony as shown on the map; the map speaks for itself; I am asking now what you know, independent of the map.

A. This trail begins to the north side of Mr. Light's ranch
148 at Sopris Creek, running in a southwesterly direction.

Q. Is that one of the trails you have referred to?

A. Yes sir.

Q. And the other one, where does that start?

A. There is one starting at the southwest corner of Mr. Light's ranch, or where his ranch joins Mr. Findley's. This trail leads to the south and west.

Q. Are there any indications— have you ever seen any indications on the ground that those trails have been directly entered upon by cattle coming out of Mr. Light's place, or other animals coming out of Mr. Light's place?

A. Yes sir.

Q. State what those indications were?
A. A very well defined trail at the southwest corner of Mr. Light's ranch.
Q. Where does it go?
A. It leads in a southerly direction toward the Forest.
Q. Does it go to the Forest, or stop short of the Forest?
A. It goes to the Forest.
Q. Then that is the trail marked on that map as the southerly one?
A. Yes sir.
Q. Did you ever find any cattle of Mr. Light's on the Holy Cross Forest?
A. Yes sir.
Q. On more than one occasion?
A. Yes sir.
Q. Take the first occasion; when was it?
A. The latter part of May or the first of June, 1907.
Q. What part of the forest were they on,—approximately;
149 I don't want the exact——
A. I can give you the sections.
Q. Well, that is what I would like.
A. In section 1, township 9 south, range 87 west.
Q. How were they branded?
A. They were branded "Box L" ([L]).
Q. How many of them were?
A. I mentioned two different dates. I can give you the approximate number and date,—about fifteen head, the latter part of May, 1907, and on the 13th day of June 109 head of cattle and 10 head of horses bearing the same brand as described above.
Q. Now in making those examinations when you found those cattle and horses did you ride a large or small portion of the reserve?
A. Well, comparatively small.
Q. And you don't know how many more there may have been within the reservation?
A. No sir, my impression is that the majority of the stock owned by Mr. Light at that time was on the forest.
Q. Why do you state that?

Mr. WARD: We move to strike that out because it is incompetent, irrelevant and immaterial.

Q. Why do you state that?
A. On account of finding such a large number of cattle in a comparatively small space.
Q. Well, did you then go down to the lower range?
A. Yes sir.
Q. Did you find any of Mr. Light's cattle near his ranch?
A. I found a very few to the south and west.
Q. And what character of cattle, the same as the others?
150 A. Same as the others, yes.
Q. What was the condition of the lower range at that time?
A. The lower range at that time,—I am speaking of the range

south and west of Mr. Light's ranch—where these cattle were found was about three-quarters of a mile from the forest boundary—was fair.

Q. State whether there were any evidences that the cattle within the reserve had used either of these trails?

A. Yes sir.

Q. What were they?

A. I could see that cattle had lately traveled over these trails.

Q. And where you found the cattle in the reservation, was that near or remote from the terminus of the trail?

A. It was what you might call at the terminus of the trail.

Q. Was that in Hay Park?

A. Yes sir.

Q. Did you take any steps to notify Mr. Light of the finding of these cattle there?

A. Yes sir, I notified him on the 13th day of June.

Q. Of what year?

A. 1907.

Q. How did you notify him?

A. By written notice delivered in person.

Q. At what place?

A. At his ranch.

Q. What did you notify him?

A. I don't know as I can give the exact words of the notice; I can give the substance.

Q. You delivered the original to Mr. Light, did you?

A. Yes sir.

Q. State the substance of it.

151 A. That he would be required to remove his stock inside of ten days or pay the grazing fee.

Q. What did he tell you, if anything?

A. He told me he would do neither.

Q. Did he deny, or express any doubt as to their being within the reservation?

A. Yes sir.

Q. What did he state?

A. When I first spoke to him telling him that his cattle were on the forest, he says, "I think not," he says, "My cattle are running north and east of here." At this time we were in his meadow about. I should judge, half a mile from the house, and he pointed to the range to the east of northeast of his ranch, and being acquainted with cattle range- why I naturally asked him if he had been in the habit of running his cattle in that vicinity, and he said no, that he had run his stock up this other way,—pointing towards the land included in the forest; and I asked him then how long he had ranged his cattle over on this land to the north and east, and he says, "Just this year"; and I asked him if he was herding them and watching them, and he said "No." "Well," I says, "you might tell that to a person that had never had any experience with cattle and it might have some effect, but not with me." At this he laughed.

Q. You said that he might tell what?

A. That cattle would range over there, just put over there without being herded, that was it.

152 Q. When you suggested that that was absurd he laughed?

A. Yes sir.

Q. Now do you know what length of time those cattle of Mr. Light's stayed in the forest in 1907?

A. In 1907?

Q. Yes.

A. Until the end of the grazing season, or when stock naturally work down from the higher range.

Q. Did he ever have any permit to graze in that reserve in 1907?

A. No sir.

Q. Has he any now for this year?

A. No sir.

Q. Or did he have any for this year?

A. No sir.

Q. Did Leo Light have any for this year?

A. No sir.

Q. Did Mr. Light take out any permit in 1906?

A. Yes sir.

Mr. WARD: All that is admitted, so we think this testimony is irrelevant and immaterial, about the permits.

Q. Now when did you next see any of Mr. Light's cattle in the Holy Cross Reservation?

A. In May 1908.

Q. Who was with you then?

A. Mr. McLaren.

Q. Anyone else in your party?

A. Mr. Burdick.

Q. Have you any notes as to the number of cattle you observed at that time, and who was with you?

A. Yes sir.

Q. Will you please produce those?

(Witness produces note book).

(Recess until 2 o'clock P. M.)

2 O'CLOCK P. M.

Parties present as before.

153 Direct examination of HARRY H. FRENCH resumed.

By Mr. KNAEBEL:

WITNESS: I would like to make a correction in my statement there since referring to my notes.

Q. Make it.

A. That the first visit that I made was not with Mr. McLaren and Mr. Burdick, as stated.

Q. State the particulars of your first visit in 1908 to the Light ranch.

A. On May 7, 1908, in company with Mr. Arnold and Mr. Ashlock——

Q. The same Mr. Ashlock who is here as a witness?

A. Yes sir.—I visited the vicinity of Mr. Light's ranch and made an examination of the range in the vicinity of his ranch. I paid particular attention to the condition of the range, and number of stock on the range in that vicinity.

Q. You mean you paid attention to the ranch contiguous to Mr. Light's place especially?

A. Yes sir.

Q. Now state if you please what you found in the way of cattle, and the condition of the range, etc?

A. The condition of the range at this time of the year to the east of Mr. Light's ranch the grazing was very short; I found no cattle on the range to the east and northeast of Mr. Light's place at this time.

Q. When you say east and northeast, do you refer generally to the vacant lands that run between the East Sopris and the
154 Roaring Fork?

A. Between East Sopris and Roaring Fork.

Q. How about the water conditions there?

A. There was no water only in Sopris Creek—none on the open land between East Sopris and Roaring Fork.

Q. Now proceed as to your observations further?

A. I saw quite a number of cattle on Mr. Light's ranch and a few on the outside and to the west of Mr. Light's ranch.

Q. About how many cattle, all told, did you find on the ranch and near it on the west?

A. Approximately 100 head.

Q. How were they branded?

A. All of those that I observed carefully, that is, that I was close to, were branded with "Lazy T Open A".

Q. Is that the same brand as heretofore referred to as "Lazy T V" and "Lazy V T"?

A. Yes sir, it can be read two ways, either "Lazy V T" or "Lazy T Open A".

Q. Go ahead.

A. I saw seventy-two head of cattle inside of Mr. Light's fences; I did not go into the field to examine these, but a number of them were close to the fences and those that were near the fence that I could see had the brand as described above. I saw twenty-two head on the outside to the west of Mr. Light's ranch.

Q. How far from his ranch?

A. Well, they were grazing near the fence not but a short distance.

Q. How were they branded?

A. Those that I examined were branded with the brand as described.

155 Q. Well, were they all together as though belonging to one herd, or was there anything to indicate that some of them might have belonged to some other owner?

A. Well, I didn't examine every one carefully for that, but from the condition of the fences at that time I supposed that most all of those cattle belonged to Mr. Light.

Q. Describe the condition of the fence—the place you refer to?
A. In the southwest corner there was a pair of bars that were down, open, and to the north of this were two open places in the fence also.
Q. On which side of the ranch, toward the north?
A. On the west side.
Q. Away from the forest reserve, or toward it?
A. Toward the forest reserve.
Q. How wide were the openings all together?
A. Why there was just one panel fence, I should judge sixteen feet.
Q. Sixteen feet each?
A. Sixteen feet each, I should judge approximately,—I didn't measure the distance.
Q. Their openings, all told?
A. Yes sir. The openings in the fence to the north, there was a wire fence, what we term a wire gate; that is, the wire was taken down and turned around and hung up on the fence like to admit of the ingress and egress of stock.
Q. Then it was not that the fence had been broken?
A. No, sir, it was so arranged that it could be put up very easily,
156 Q. And it had been unfastened and hooked back to do it?
A. Yes sir and the bars were down. I refer to the bars in the southwest corner.
Q. You spoke just now of the opening on the northwest side of the ranch. To make it perfectly plain, which side of the ranch do you mean?
A. On the west side.
Q. I wish you would take this map, Exhibit 1, and in pen and ink indicate those three openings you have referred to, and write the word "opening" opposite each one.
A. Where it is marked on the map where a trail starts from?
Q. Which trail?
A. The trail in the northeast quarter of section 5, town 9 south, range 86.
Q. And the other openings were close to it?
A. Yes, they were about, I should judge, not to exceed a quarter of a mile.
Q. On the same side toward the reserve?
A. On the same side toward the reserve.
Q. You spoke about that trail. Were there any indications that cattle had passed out of those openings?
A. Yes sir.
Q. State what there was.
A. By the tracks in the trail it showed that cattle were traveling back and forth over those trails at that time, the tracks were very plain.
Q. Well, from what point had they been traveling; were they going out of Mr. Light's place?

58

A. They were going out of Mr. Light's place and going
157 out on the public domain.

Q. And directly upon what, if any trail?

A. More particularly on the trail to the southwest corner.

Q. Leading where?

A. Leading out towards the forest.

Q. As marked upon Exhibit 1?

A. Yes sir.

(Photographs marked by the Examiner Exhibits 2 and 3 Complainant's Proofs).

Q. Now I show you the photographs which have been marked Exhibits 2 and 3. Pleace state if you know what they represent?

A. Exhibit 3 represents a gate in the southwest corner of Mr. Light's ranch where it joins Mr. Finley's place,—the gate that I made reference to where it was plain to be seen it had been lately used by cattle going from it.

Q. What is the other exhibit?

A. The other exhibit is a picture of the same gate taken from a different position.

Q. Do you know when those photographs were taken?

A. Yes sir.

Q. When?

A. On May 7th.

Q. Who took them?

A. Mr. Arnold.

Q. In 1908?

A. 1908.

Q. Did you make an examination of the fence on the north of Mr. Light's place?

A. Did I?

Q. Yes.

A. Yes sir, on account of finding these openings on the west side of the fence I wanted to make an examination of the fence surrounding his place to see if there were any openings in the
158 fence on the side of his ranch leading away from the forest, but I did not find them.

Q. The fence was intact was it?

A. The fence was intact.

Q. How many times did you ride up and down that fence there that day to find out?

A. Well, I made two or three trips around the fence and examined it very carefully all the way.

Q. Were there any indications on the ground, of cattle having recently passed out of the ranch on the north or northeasterly side?

A. There was not.

Q. You looked for those?

A. Yes sir, in particular.

Q. How well defined were the paths which you have referred to which you saw leading out of Mr. Light's ranch in the direction of the Holy Cross forest?

A. They were very well defined, particularly the opening to the southwest where Mr. Light's ranch joins Mr. Finley's.

Q. Was there anything from which you could tell whether those paths had been worn by cattle or by wagon, one or the other? If so, which?

A. Why they were worn by cattle.

Q. How could you tell that?

A. By the tracks and by the size of the trail.

Q. Not a wagon road?

A. Not a wagon road, no sir.

Q. You said that you examined the lower ranch on the northeast and north and northwest of Mr. Light's at that time and found the grass close?

A. Yes sir.

159 Q. You will now state what you mean by the grass being short?

A. I mean not an abundance of feed.

Q. Short in quantity?

A. Short in quantity, yes.

Q. Could you tell whether it had been over-grazed there that spring or not?

A. The range to the north and northeast of Mr. Light's place which is between East Sopris and Roaring Fork evidently had been grazed closer at that time.

Q. Well, what was there left in the way of forage; was it good, bad, or indifferent, poor or what?

A. It was very poor.

Q. You said there was no water there at that time.

A. Only in Sopris Creek.

Q. Now you will describe the condition that you found then existent of the watering place or places accessible from this range just referred to in Sopris Creek.—East Sopris Creek?

A. The only accessible water was at the north of Mr. Light's place, and the Sopris Creek runs through his ranch, and the cattle that are grazing to the west of his ranch could go in through these openings into his field and get water there and then pass back out on to the open range to the west toward the forest.

Q. Well, what I want to get at is a graphic and accurate description of the topography and other features of this watering place on Sopris Creek, so that the court may know what kind of a place it is that the cattle have to go to, and what the tendency of cattle is, whether to run back upon this vacant land, or to go else-

160 where after taking water.

Mr. WARD: We object to the explanation on the ground that it has a tendency to lead the witness.

The EXAMINER: You may answer Mr. French.

Q. (Question read by the stenographer).

A. The watering place as situated to the north of Mr. Light's place is such that the cattle grazing to the west are on the west side of Mr. Light's place.—is such that if stock would come down to this

water they would return on the range to the west, as the range to the east and northeast of Mr. Light's place at that time was not in good condition for grazing, the grass being short.

Q. Was the grass dry or green?

A. What grass there was, was green. That was very early in the season, you understand.

Q. Now when did you visit the place next, Mr. French?

Mr. KNAEBEL: Complainant offers in evidence the photographs exhibits 2 and 3.

A. On May 20, 1908, with Mr. McLaren and Mr. Burdick.

Q. State what you found, Mr. French and what you did?

A. I made an examination of the range.

Q. I wish you would particularize in every instance what you mean by "range."

A. I was going to say of the open land to the east and north of Mr. Light's ranch, which is between East Sopris Creek and Roaring Fork.

Q. What was the condition of that range at that time?

161 A. The range at this time was not in good condition, that is, there is only a scattering stand of grass on this range when it is at its best.

Q. Well, go on and state what the condition was at that time, if you please?

A. There wasn't grass enough at that time to support any considerable number of stock.

Q. What do you mean by "a considerable number of stock"?

A. Well, say eighty or ninety head of cattle.

Q. And what grass there was, was of what character?

A. Blue-stem.

Q. I don't mean the species of the grass but the character with reference to its attractiveness to cattle; its value as a forage?

Mr. WARD: We object to the question as suggestive and leading.

A. As stated before it was only in very limited quantity.

Q. You stated before what it was when it was at its best. Was it at its best at this time, Mr. French?

A. No, I would not consider it at its best at this time.

Q. Was it in good or poor condition?

A. It was not in good condition.

Q. Was it dry or was it green?

A. The soil was very dry, and the grass at that time was beginning to show signs of drouth.

Q. Were there any cattle on that range, then?

A. I found no cattle on that range.

162 Q. Any evidences of their having been there recently?

A. No sir.

Q. Was there any water on that range?

A. No sir, only in Sopris Creek.

Q. Did you look for water particularly?

A. Yes sir, I made a close examination.

Q. And where did you find any evidences of water outside of East Sopris Creek?

A. I found no evidence of any water on this range.

Q. Were there any mud holes; had there been any mud holes there?

A. There was only one place that I found where a little water might have stood early in the spring,—probably along about the 1st of April.

Q. Where was that place?

A. That was probably half a mile from Mr. Light's ranch.

Q. In what direction?

A. North and east.

Q. How many accessible places are there,—accessible approaches to the waters of East Sopris Creek from this vacant land you have just spoken of. Can you give us any idea as to how many places cattle could find ready access to the water north of Mr. Light's place,—East Sopris Creek?

A. For about a quarter of a mile from the fence down, starting where the fence crosses East Sopris, the cattle could get to water.

Q. Is it mild, or steep of descent?

A. Fairly steep.

163 Q. What is the position of the stream with reference to being readily approached by the cattle after they get down into the gulch; can they walk right into the water or would they have to seek places along the stream?

Mr. WARD: The question is leading.

A. There is one place where they could walk into the stream very *very* readily.

Q. Where is that?

A. A short distance below Mr. Light's fence on the north side.

Q. Now is that where the trails come?

A. Yes, sir, the trails, the more defined trails lead to the west from this point and south.

Q. And as you go down Sopris Creek what is the condition of its banks, and the situation of the stream in the bottom of the cañon with reference to its accessibility to stock?

A. It is very steep on either side of the stream below this point.

Q. Is there any considerable quantity of grass or feed growing within that cañon?

A. No sir, especially on the north side of the stream; there is a little feed on the south, but the hills there are covered with a very thick growth of brush.

Q. Now you testified that on the open ranges, or what you call the "lower ranges" outside of the forest, the grazing is fairly good in the earliest part of the year. Is that correct?

A. Yes, it is fairly good in the early spring, but all stock in that locality are turned out on these lower ranges, and as a

164 result this range is soon eaten off, and they have all got to drift to higher range for feed. It is a natural habit of cattle to do that.

Q. Is that true also of the vacant lands which lie between Mr. Light's place and the reserve on the——

A. On the west, yes sir.

Q. And which lie to the northwest of Mr. Light's place west of the East Sopris Creek?

A. Yes, sir, as stated, that is the condition of all of those lower ranges either west of his place or east of his place.

Q. What are the habits of the cattle, then, generally in that region when they are turned out?

A. They first range on this lower range until it is eaten out, and they keep working up to the higher range to better feed. The low range the snow goes off much earlier and dries out quicker, and of course the feed gets short because it is over-grazed, on account of all cattle being turned on this lower range.

Q. Would you say it was badly over-grazed?

A. Yes sir, I would.

Q. And has that been the habit of the stock, to your knowledge in that vicinity for years?

A. Yes sir, to be turned out on the lower range and graze that off and gradually work up to better fields.

Q. Now what would be true, in your opinion, of stock
165 which was brought in there from another place and had not become familiar with those fields?

Mr. WARD: We object to this testimony in reference to the habit of the stock and the turning out, because the witness has not qualified to state of his own knowledge about these habits and methods.

Q. (Question read by the stenographer).

Mr. WARD: We object for the reason that the witness has not qualified himself to express an opinion of value upon such subjects.

Q. Answer the question, please.

A. My opinion would be the same. Cattle turned out on this lower range would work up to the higher range where the feed is better.

Q. What makes you think that would be true?

A. That is the natural habit of cattle.

Q. What, if any, influence do the actions of the cattle which had lived in that locality before, have upon the actions of cattle newly brought in?

A. Well, that would tend to lead the cattle up there; they would work up with the cattle that were accustomed to the range.

Q. Now with respect to the forest itself, you will please state whether you have examined the region covered by Exhibit 1 for the purpose of ascertaining whether it has been grazed more than
166 it ought to be,—over-grazed?

A. (Witness referring to map) I found——

Q. Have you examined it, I say?

A. Yes sir, I have examined this range and I find that the lower portions of the range near the boundary line have been over-grazed.

Q. In the forest?

A. In the forest the same as it is on the open domain below the forest lines.

Q. And how about other portions of the reservation which afford a range for cattle turned out in the vicinity of Mr. Light's ranch?

A. I found that all of this lower range is over-grazed, if I understand the question.

Q. No, other portions of the reservation; you spoke of certain portions of the reserve that were about as bad as the open range on the east of it. Now how about other portions of it?

A. On the higher range I found the feed much better.

Q. And the water up there is——

A. There is sufficient water on the forest at any point as shown on this map.

Q. Do you know officially whether the Secretary of Agriculture has designated the maximum number of cattle that may be allowed to graze for the present year within the Holy Cross forest?

A. Yes sir.

Q. And did he designate a maximum number for last year?

A. Yes sir.

Q. Now is this portion of the reservation exhibited on Ex-
167 hibit 1, a portion of the grazing district of that reserve?

A. Yes sir.

Q. You will state what the tendency of over-grazing any portion of the forest reservation is in respect to the grass supply, and the re-forestration conditions,—the tendency of over-grazing?

A. Where a range is over-grazed, too closely grazed, it will practically kill all of the grass; in places the soil will become barren, and will wash, erode.

Q. And what is the result of that in course of time upon the grazing value and the possibilities of that portion of the forest in the way of sustaining a new growth of trees?

A. It practically destroys the value as far as grazing is concerned, and will also retard or destroy the chances of reproduction for timber.

Q. What effect does it have upon the soil to have the grass eaten off year by year excessively?

A. It will destroy the productive qualities of the soil, because if it is eaten and tramped out bare in that way, the soil will naturally wash away by the rains,—the action of the weather.

Q. Have you observed such places as that in places on the reservation?

A. Yes sir, I noticed some places on the reservation where it has been over-grazed, and there is practically no feed, or very little; what feed is there is weeds; the native grasses have been killed out.

168 Q. State whether or not the full number of cattle which can properly be supported upon this particular region of the reservation has already been assigned to that portion from among the cattle that are licensed, and permitted through the compliance by their owners of the requirements of the regulations?

A. Yes, the full number have been allotted.

Q. So that the introduction year by year of Mr. Light's cattle into this district results in what?

A. It results in over-grazing on the lower range, and also in the land included within the forest.

Q. What result does it have upon the realization by those who comply with the regulations and the law, of their full enjoyment of the grazing privileges which they pay for?

A. It results to their detriment, as it makes it very hard to properly distribute the cows and handle them on this portion of the forest.

Q. Now you will state how, please, Mr. French?

A. On account of a portion of the stock that run on there that are not permitted stock; by "permitted" I mean those that a permit has been issued for, for grazing, and on account of Mr. Light not complying with the regulations it makes it difficult to administer this portion of the forest.

Q. Won't you please state how?

A. Under the regulations the cattle are to be salted and properly distributed on the range, and so handled as to not over-graze any particular portion.

169 Q. Well, how does that affect other people, to let Mr. Light's cattle come in there, when he don't comply with any regulations?

A. It makes it very difficult to compel other people to follow the regulations closely.

Q. In what respect?

A. In regard to places where they should put their cattle.

Q. And what effect does it have upon the preservation of the grass in the lower portions of the forest range for use in the fall, by cattle returning from higher levels?

A. Well, as a result the lower range is eaten and grazed too closely.

Q. Now you visited that place again in 1908?

A. Yes sir.

Q. When was that?

A. On June 4, 1908.

Q. Mr. French, did you go to the ranch then, again?

A. I can read the notes, or I will——

Q. You may give your recollection of what you did, and what you saw, and if you need to refresh your recollection from notes made at any time, you may do so.

Mr. WARD: They were made at the time, were they?

WITNESS: Yes sir.

A. On June 4, 1908, Mr. McLaren and Mr. Burdick and I rode over the range in the Holy Cross forest. This was in township 9, south range 87.

Q. Was anyone else along?

A. Mr. McLaren and Burdick.

170 Q. Did you all go together?

A. Yes sir, we rode to the forest line together, and then

we separated there; McLaren and Burdick rode together and I rode on by myself.

Q. Did you cover the same or different ground?

A. I covered different ground; and the stock that was seen by me was not seen by Mr. Burdick and Mr. *Mr.* McLaren.

Q. How many stock did you see, of Mr. Light's?

A. I saw ten head.

Q. Of what brand?

A. Branded "Lazy T Open A" and "U Slash U", besides a number of other stock of various brands belonging to people in that vicinity.

Q. Did you see any horses of Mr. Light's?

A. No I didn't see any horses at this time.

Q. How was the grazing in the forest then as compared with the grazing in the range below?

A. The grazing in the forest was better than on the lower range.

Q. How much better?

A. It was considerably better; the range near Mr. Light's place, or to the north and northeast between Sopris and Capital Creek was very poor at this time, and also the range to the west of Mr. Light's place was not as good as the higher range, or that inside of the forest.

Q. Were there any cattle that you could see on the lower range at that time?

A. I saw a few head on the west side of Mr. Light's place.

Q. About how many?

171 A. At this time we found twenty or thirty head of cows in section 1, approximately in section 1, township 9, south range 87.

Q. That was June 8th?

A. June 5th.

Q. Now that was before the heat had dried up the grass on the lower range completely?

A. Yes sir, completely. I didn't quite finish that.

Q. All right; go ahead.

A. I was going to state, there were twelve head of Mr. Light's cattle, or cattle bearing the brand "Lazy T. Open A", this bunch of cattle found in section 1.

Q. Could you tell whether they were working toward the forest, or away from it, or anything about it?

A. The stock at that time were all working toward the forest. On that date there was some of these cattle that bore these brands that were found very high on the range, up nearly to the snow line. It shows that the natural tendency of stock, even though not acquainted with the range, would be to work up on the higher range.

Q. What difficulty have you had in persuading the owners of stock permits in this region to salt, for the purpose of making a proper distribution of their stock?

A. Well, some refused to put salt up on the forest, put the salt on the outside of the boundaries, on the low range.

Q. Your last visit was when, Mr. French?

A. On September 6th I think. I will have to refer to another book for that. On September 5th and 6th, 1908, I visited it.

172 Q. Now state the condition that you found them in, and what you did,—in your own language?

A. I went on this range more in particular to examine the range, and also to see what stock were ranging on the forest.

Q. What did you find?

A. I found a few of the cattle branded "U Slash U", and "Lazy T V" on the range, and a considerable number of cattle bearing other brands, and——

Q. What range?

A. This is inside of the Holy Cross forest in township 9 south range 87 west. I found that the lower portions of the range——

Q. What range?

A. Near the boundary lines of the forest.

Q. In the forest or out of it?

A. In the forest and immediately out had been very badly overgrazed, but the farther, the higher in the forest on the range that I examined I found the feed better.

Q. You will state whether the rain during August last was more than usual or not?

A. We had an unusual amount of rain during the month of August.

Q. What result did that have?

A. That had the result in making the lower range better than usual.

Q. In September usually what is the condition of the lower range?

A. It is very poor.

Q. Well, what is the effect upon the cattle drifted up into the forest; do they stay up, or have they a tendency to come back?

A. They have a tendency to drift down as the nights begin

173 to get cool.

Q. What is the effect of the range if worn out, or dried out and poor? Are they more likely to come out when it is poor or good; are they more likely to come out a year like this than other years?

A. Yes, they would be more likely to come out where there had been an unusual amount of rain toward the late part of the summer.

Q. Did you ride the same range that last visit, that McLaren and Ashlock did?

A. No, not the same range, that is, I wasn't with them all the time, they rode over a different portion of the range.

Q. You divided for the purpose of not counting the same stock?

A. Yes, sir, and making as complete an examination of the range as we could.

Q. Have you ever heard Mr. Light express what his intentions are in respect of the use of the National forest, about taking out any permit or paying any tax,—fee?

A. Yes sir.

Q. Please state the occassions when you have heard him say anything on the subject?

A. I have talked with Mr. Light a number of times, and I have also heard him make statements in public meetings.

Q. Where?

A. In Carbondale and in Basalt; that he would not make application for a permit, and persuaded others to not make application for a permit, in these meetings.

174 Q. Were they meetings of stock men?

A. Yes sir.

Q. When were such meetings held, if you know, when he made statements of that sort and endeavored to persuade people.

A. One meeting in particular was at Basalt.

Q. When?

A. February 23rd, 1907,—I think that was the date; I could tell by referring to my notes the exact date.

Q. Was anything signed at that meeting?

A. Yes sir.

Q. What was it?

A. It was a sort of an agreement or resolution framed up, that parties signing this would agree to not make application for permit or pay the grazing fee.

Q. Who instigated that, if you know; or did Mr. Light, rather have anything to do with it?

A. Yes, Mr. Light I think had more to do in regard to getting up these resolutions than anyone else.

Q. What makes you say that?

A. Because he took the lead in the meeting and in the speaking.

Q. Advocating it?

A. Advocating it. He said he didn't intend to make application for a grazing permit, and he didn't want anybody else to.

Q. Well what was said in respect of the use of the land; were these statements of his coupled with the statement that they would not avail themselves of the use of this land of the United States?

Mr. WARD: Defendant objects as leading.

Q. Do you understand the question?

A. No, please put it again.

175 Q. (Question read by the stenographer).

A. I don't know as I could state the exact words that Mr. Light used, but, in substance, it was this—that the Government had no right to collect this fee and it was unconstitutional, and for this reason he would not make application for a permit or pay a fee; that the cattle would be allowed to drift wherever they saw fit.

Q. Do you recall any more recent occasion upon which Mr. Light has made any similar statement?

A. At the time that I served notice on him, that was later, that was in June.

Q. Last year?

A. Last year, June 1907, he said that he would not make application for a permit.

Q. Do you recall any more recent expressions of a similar character upon his part?

A. Not lately I haven't heard him say anything regarding it.

Q. Not since this suit was begun?
A. Not since this suit was instituted.

(Plat marked "Exhibit 4, Complainant's Proofs.")

Q. Did you state how many cattle of Mr. Light's you counted on the reservation on the 6th of September last?
A. I don't think that I did; I am not certain.
Q. Well now state it, please.
A. I will have to refer to my notes.
Q. Well, please refer to your notes.

A. (Witness refers to notes.) I found eight head that
176 were branded "U Slash U" and "Lazy T Open A".

Q. Mr. French, please examine the paper Exhibit 4.
A. There were four head of the "U Slash U" and four head of the "Lazy T Open A".
Q. Please examine the plat and executive order marked "Exhibit 4" and state whether or not that is a duplicate of the official copy of the order of the President of July, 1908, with the attached plat defining the boundaries of the Holy Cross forest. Just look at the order and say.
A. Yes sir, it is.

Mr. KNAEBEL: We offer this in evidence.

Q. That represents the reservation under your charge as Supervisor?
A. Yes sir.
Q. And how many field men do you have assigned to your control for the guarding and inspection of this large body of land,—approximately how many men?
A. Thirteen.
Q. Now would it be feasible with the number of men at your disposal and the moneys appropriated for the purpose, to keep up a constant patrol of the boundaries of that reservation, for the purpose of ascertaining when stock are not licensed and entered, and when they came out, and keeping close track of the number of those which stay in there, and the damage they did?
A. It would not; it would not be feasible.
Q. Would it be possible?
A. No sir, not with the limited number of men that we have, and the other work.

177 Q. And is that one of the reasons that the stock usually—trespassing stock as well as licensed stock—enter from time to time in bunches at different places and go out at different times; is that one of the reasons?
A. Yes sir.
Q. Has there been any comment in the vicinity of this reservation among those who use it by permit for their stock, concerning the talk and attitude of Mr. Light?
A. Yes sir.
Q. For how long a time?
A. Well for the past year.
Q. And I will ask whether his attitude concerning the permit sys-

tem and his refusal now or in the future to take out a permit for his own cattle, are matters which have become generally notorious in that region?

A. They have.

Q. Have you had any difficulties in your administration of this reservation on account of it?

A. Yes sir, it has been very difficult to get other stockmen to take out permits for this reason, that Mr. Light has been running his cattle on the forest reservation without a permit and defying the regulations.

It is hereby stipulated by and between the parties hereto that Exhibit No. 5 is an official copy of the Use Book of the Department of Agriculture concerning the use and occupancy of forest reservations, approved by him June 3, 1907; and that exhibit No. 6 is a like copy of the said Use Book as thereafter revised, and containing the regulations of the Secretary of Agriculture concerning the forest reservations and the use and occupancy thereof, as approved by him June 3, 1908. That either side may refer to and use at the final hearing of this cause, and in any subsequent proceedings, by appeal or otherwise, such portion of said exhibits, or either thereof,
178 as they may desire; but that in the event of an appeal, or appeals, only the portions used upon the final hearing shall be printed, or in lieu thereof it will be stipulated of record that copies of the said Use Book printed by authority may be employed by the Judges of the appellate court in connection with the transcript of the record.

Cross-examination.

By Mr. WARD:

Q. Mr. French, how long have you lived in Colorado?

A. Since 1885.

Q. What portions of Colorado have you lived in the last ten years?

A. Eagle County.

Q. Have you ever lived in Pitkin County?

A. A short time after I entered the forest service.

Q. Did you ever do any cattle business in the western part, on the western slope?

A. Yes sir.

Q. What year or years?

A. Approximately for the last eighteen years prior to my entering the Government service.

Q. How large, on an average, has your herd been?

A. From fifty to three hundred and eighty head.

Q. When was that herd as large as three hundred and eighty head?

A. In 1893.

Q. Upon what range did you have your herd then?

A. What is known as the Sheephorn and Piney cattle range.

Q. In what county?

A. Eagle County.

Q. How are the range conditions of Eagle County in comparison with the range conditions of Pitkin County; are they in —
179 way similar in some respects?

A. Yes.

Q. Does blue-stem grow in Eagle County?

A. Yes sir.

Q. On the range that you used?

A. On portions of it.

Q. How was the water in Eagle County as compared with water in the territory around the Light ranch, on your range in Eagle County?

A. Much better.

Q. As a stockman, Mr. French, is it injurious for cattle to travel more than a mile for water while on the range?

A. That depends entirely on the topography of the country.

Q. In the ordinary range down the Roaring Fork Valley, would cattle that would travel two miles for water—would that amount of travel be injurious to the animal?

A. Yes, in a mountainous country I would think it would, I know it would.

Q. How far could they travel in a more open country without harm?

A. They possibly could travel three miles, maybe farther.

Q. Do you know of any herds that were successfully handled where they had to travel for more than one mile to water in the western slope?

A. Yes, I think there are places where stock is ranged that they possibly would have to travel more than a mile for water.

Q. But in your opinion, if the stock should have to travel, say, two or three miles in a country similar to the country around Mr. Light's ranch that stock could not be successfully handled?
180 A. No sir.

Q. So that, according to your opinion, stock could not be successfully handled in the territory around Fred Light's ranch were it not for the grazing upon the mountain sides. Is it your opinion that if they could not use the mountain sides they could not successfully handle stock in the country around Mr. Light's ranch?

A. Could not,—successfully?

Q. Yes, if they were shut off from the forest reserve would it be possible to handle stock successfully in that territory?

A. No sir.

Q. Do you know anything about the stock-raising in this territory along ten or fifteen years ago?

A. No sir, not by personal observation. You refer to Roaring Fork Valley?

Q. Roaring Fork Valley.

A. Yes sir.

Q. Do you know from your general information, matters of public knowledge, whether or not there were many cattle raised in the Roaring Fork Valley in years past, before the forest reservations were established; have you ever heard anything to that effect?

A. Yes sir.

Q. Hasn't that territory been considered in years past as one of our leading western stock-grazing regions?

A. I think not.

Q. But it is your understanding that there have in years past been considerable cattle handled along the Roaring Fork Valley?

A. Yes and there still is.

181 Q. You don't know whether when those cattle were handled in years past they used the portion of the mountain sides now embraced in the forest reserve. You don't know anything about that?

A. From my experience in the cattle business I would say that they did.

Q. Yes. You would think so?

A. Yes sir.

Q. You would consider, then, practically the entire Roaring Fork Valley,—I mean outside of the forest reserve—as poor range on account of the scarcity of water?

A. Not alone on account of the scarcity of water, but scarcity of feed.

Q. But as to the water of that range you would consider it a poor range, would you, because cattle would have to go more than a mile sometimes to water?

A. Portions of it they probably would have to go over a mile.

Q. So that any range in a rough country, such as is in that valley, where cattle are compelled to go from one mile to two miles or three miles to water, you would consider it a poorly watered range?

A. Yes, impractical.

Q. When cattle go for water do they go up the mountain for water or down the hill, ordinarily?

A. When they go for water?

Q. Yes, when they start after water?

A. That depends on the position of the cattle, whether they are below the water or above it.

Q. Are there no places in Colorado on the western slope where they are compelled to go up the hill for water?

A. Some places they have to go up the hill, and some

182 places they have to go down.

Q. There is no scarcity of water in East Sopris Creek itself, is there; there is an abundance of fall there of water?

A. Yes sir.

Q. It never goes dry?

A. Not to my knowledge it never has.

Q. It has had a good, strong flow during the years that you have seen it?

A. Yes sir.

Q. And the only trouble would be the steep banks?

A. Yes sir.

Q. Steep sides for the cattle to get into?

A. Yes sir.

Q. I understood you to say that there was about a quarter of a

mile of East Sopris Creek, about northwest from Mr. Light's most northerly fence, that was of easy access to water for cattle?

A. Approximately.

Q. What is your opinion, Mr. French, that, eliminating that quarter of a mile, otherwise it is practically impossible for cattle to get water out of either East Sopris Creek or Sopris Creek proper? Is that your opinion?

A. I do not say it was impossible for them to get water.

Q. Well, is it practically impossible, or is it simply difficult?

A. Difficult.

Q. You think that a cow that was grazing near the junction of Sopris Creek and the East Sopris Creek could get water there without going away back to Mr. Light's fence?

A. At the junction of East Sopris Creek?

183 Q. At the junction of East Sopris Creek,—a cow that was grazing, would it go down to get water there, or would it go back to where it was easier? From your knowledge of cattle's habits, would it come down and get water there, or would it go back and get water there?

A. I think a cow would go to the nearest place to get water.

Q. So that the steepness of the banks of East Sopris Creek and Sopris Creek you think would not prevent cattle grazing in that vicinity from getting what water they need?

A. I did not say that the water was—that the stream was so that it would be impossible for cattle to water; there is water at a number of places.

Q. Do you think that the inaccessibility of water is such as to have a tendency to drive the cattle away from that neighborhood, by itself?

A. Not water alone; it would be a scarcity of feed.

Q. So, then, I do not understand you now to say that you consider the range northwest and north, and northeast of Fred Light's ranch as being poorly supplied with water; or do you consider it poorly supplied with water?

A. Yes sir I do.

Q. There is hardly any portion of the range just described that is more than a mile from water in a straight line, is there?

A. In referring to the range, what range do you mean?

Q. I have just described it as being north and northeast and northwest of Fred Light's ranch for a distance of two or three and

184 *five* or six miles?

A. There are places where it would be over a mile.

Q. How much over a mile, approximately,—as much as two miles?

A. Yes, I would think so, approximately.

Q. Where would that be, approximately, on the map?

A. That would be rather a difficult matter to state the particular points on that entire range that it would be two miles from water.

Q. The most of the range would be within a mile and a half of water, wouldn't it?

A. I should say so.

Mr. KNAEBEL: May I ask now whether you refer to the distance in an air line, or the distance that the stock would have to travel?

Mr. WARD: I refer to the distance in an air line.

WITNESS: Stock don't travel,—don't take that course.

Q. But a cow in this territory one mile away from water in an air line might travel two miles to get in there, wouldn't she?

A. Yes, she might on account of the steepness.

Q. And, in your opinion, that would be injurious to the cow?

A. Yes sir.

Q. This is the result of your experience in the cattle business in Colorado?

A. Yes sir.

Q. The map that we had reference to, I understood you to say was a correct representation of the land and streams in the vicinity of Mr. Light's ranch. Is that what you said?

A. The correct showing of the land and the streams are approximated.

185 Q. The correct showing of the land and the streams are approximated. And do you want us to understand that the trails which were marked there yesterday are accurately depicted, or approximately?

A. Approximately.

Q. You heard the testimony of Mr. McLaren this morning as to where the trail started from East Sopris Creek, did you not?

A. Yes sir.

Q. What is your recollection of where those trails started from East Sopris Creek, running westerly and southwesterly, in reference to Mr. Light's north fence where it crosses East Sopris Creek?

A. The trail starts at a point at a short distance north of Mr. Light's fence and crosses East Sopris Creek.

Q. Mr. French, what do you mean by "a short distance," a hundred yards or half a mile?

A. Half a mile is not a short distance,—not to exceed a hundred yards.

Q. Now please look at complainant's Exhibit 1. Is the trail located there on the section line between sections 29 and 32; is that a correct transcript upon the plat and map of where that trail really starts?

A. It is approximately correct.

Q. About how much incorrect,—a quarter of a mile?

A. Do you mean in regard to legal subdivisions?

Q. No, in regard to Mr. Light's fence; is that point a quarter of a mile off from where it should be? Right here at this point (indicating on plat) you say it was right close to Mr. Light's

186 fence; that is a point on the map which is on the section line between sections 29 and 32 where the trail leaves East Sopris Creek, and Mr. Light's fence, according to the plat is probably more than a quarter of a mile southeasterly from that point, according to the plat. Is that correct?

A. I don't know the exact location of the section line at this point,

but the trail leaves East Sopris a short distance from Mr. Light's north fence not to exceed twenty rods.

Q. Now if Mr. Light's north fence is upon his own land, as marked in the plat, the tracing of the trail is about a quarter of a mile out of the way, is it not?

A. As I stated, not knowing the exact location of the section lines I could not state.

Q. I am asking you, Mr. French, as to what this plat shows.

A. In approximating the location of the trail on the plat, a person can very easily make a mistake in a quarter of a mile.

Q. And it is a mistake of a quarter of a mile according to the plat; does that seem right to you?

Mr. KNAEBEL: I object to the question as unintelligible.

Q. Mr. French, do you understand what I mean by these last few questions?

A. Why no, I don't know that I do.

Q. What I mean is, does that plat correctly show the location of the trails, according to your remembrance of the trails?

A. It seems to me I answered that very plainly when I
187 said I didn't know the exact location of the section line there where the trail started.

Q. I didn't ask you that; I say does that show the correct location, or do you know anything about it?

A. Yes sir, I know where the trail starts.

Q. And I understood you to say it starts close to Mr. Light's fence?

A. A short distance.

Q. Does it show it stops a short distance from Mr. Light's fence?

A. That does not show Mr. Light's fence.

Q. You are unwilling to state whether you think that is correct or incorrect?

A. I think it is approximately correct, as stated before.

Q. Within a quarter of a mile?

A. A quarter of a mile ought to be approximately correct in describing a trail which runs a distance of two or three miles over a rough country.

Q. Would you consider that a quarter of a mile mistake, as to whether a cow is on the forest reserve would make any difference?

A. Surely.

Q. Would you consider a quarter of a mile would make any difference in that territory whether he was on the forest reserve?

A. I certainly would.

Q. But it don't make much difference to the trails?

A. The forest boundary line is very plainly marked. The section line is not marked at this point.

188 Q. Now, Mr. French, you spoke of a trail running out of the southwest corner of Mr. Light's ranch; will pou please indicate on that map where the southwest corner of Mr. Light's ranch is, and give it, if possible, by a forty quarter section. What does

that heavy line enclosing,—what does that represent (indicating on plat).

A. That represents Mr. Light's patented land.

Q. And where would be the south line of Mr. Light's patented land on that map?

A. It would be in section 8, town 9 south range 86.

Q. Now in the testimony where you spoke of the open bars and the trail being on the southwest corner of Mr. Light's ranch, you didn't have reference to that corner of the ranch in section 8?

A. No sir.

Q. Now give as nearly as you can by legal subdivision, the location of what you meant by the southwest corner?

A. Near the section line between sections 32 and 35 in town 9, range 86.

Q. How far from the southwest corner, approximately, from section 32,—I mean the southwest corner—approximately how far?

A. I should judge not to exceed a quarter of a mile.

Q. And the photographs Exhibits 2 and 3 represent an opening in the fence at approximately the point last mentioned?

A. Yes sir.

Q. You saw at that place a fence running in a northerly direction?

A. Yes sir.

189 Q. Upon Mr. Light's land, or near to his land?

A. Yes sir.

Q. And that was the fence that you spoke of having two openings in that had been broken, or been——

A. Not broken, they had been opened.

Q. They had been opened. Did you notice any fence inside of Mr. Light's land running in a northerly direction to the east of the first fence?

A. Yes sir.

Q. Were there any openings, broken places in that fence?

A. I didn't examine that fence.

Q. Was it the purpose of your examination, Mr. French, or did you have no purpose otherwise than to tell the truth, to testify only about the outside fence and not about the inside fence?

A. About his division fences on his ranches?

Q. Yes. You didn't think about that division fence when you were testifying on direct?

A. He has a number of division fences on his ranch,—very large ranch.

Q. I know that. But you made no examination of the division fence running practically parallel to this first outside fence that you speak of?

A. No, sir, I did not.

Q. And if there were openings there you didn't see them?

A. No sir.

Q. Mr. French, did you examine the fence along the road leading down East Sopris Creek about, a little to the north—I mean north, or a little bit to the east of north from Mr. Light's dwelling house?

A. Yes sir.

190 Q. Did you see any openings there on the 7th of May, 1908?

A. I did not.

Q. Was there a gate along that road that was open on that day?

A. There was a gate right by Mr. Light's house in a lane.

Q. But up to the north of Mr. Light's house along the road about a quarter of a mile from where the north fence crosses the creek, did you not see a gate opening out to the northeast upon that mountain side?

A. I did not.

Q. Did you see that gate open there on the 8th of May?

A. No, sir.

Q. Did you see myself and Mr. Johnson that day driving around that country?

A. I saw you on Mr. Light's ranch, at the house.

Q. And that day you passed along that road, didn't you?

A. Yes sir.

Q. But you didn't see the gate that day, open?

A. There was no gate open when we passed along there.

Q. There was no gate open when you passed along there?

A. No sir.

Q. You spoke of some cattle within Mr. Light's enclosure. Where were those cattle in reference to the road northeast of Mr. Light's dwelling house and East Sopris Creek, within Mr. Light's enclosure?

A. They were distributed all over the enclosed land, on his meadow land.

Q. On the bottom land?

A. Yes sir.

Q. Did you see any cattle in the strip of land between the most westerly fence on the western side of Mr. Light's ranch and

191 the parallel fence running north inside?

A. Yes sir, I saw some on the west side of the creek.

Q. Within that enclosure? Maybe you didn't understand me.

A. Yes, I understand the question. I saw cattle east of the west fence.

Q. Mr. French, in which direction does that fence run, in the background of the picture, marked Exhibit 3?

A. This fence here (indicating on photograph)?

Q. Yes, which direction does that run?

A. In a southwesterly direction.

Q. Whose fence is that?

A. Mr. Findley's.

Q. And there are fences, Mr. French, that are continuations of Mr. Findley's fence running approximately parallel to East Sopris Creek for several miles in a southwesterly direction from these bars you have spoken of?

A. Yes sir.

Q. How near to the forest reserve do these fences run along East Sopris Creek?

A. Where this fence begins at this pair of bars it is approximately——

Q. I mean how far up this creek do the fences go before they stop?

A. I was going to describe it.

Q. Go ahead, then, and describe it.

A. This point (indicating) would be approximately two miles from the forest line, and the fences run in a southwesterly direction, possibly within a mile and a half of the boundary of
192 the forest, and at the farthest point south they are nearer possibly three-quarters of a mile. Now those distances are approximate; I have not measured them.

Q. Mr. French, you spoke of serving a notice upon Mr. Light, I think, in the nature of a trespass notice, telling him that he should pay, and so on. When was that, or about, approximately?

A. The 13th of June, 1907.

Q. Did you at that time, or have you since that time ever told Mr. Light that if he didn't pay these fees he would forfeit all rights to graze upon the forest reserves?

A. I have not.

Q. Have you authorized any of your subordinates to tell Mr. Light that?

A. I have not.

Q. Is it a fact,—if it is permissible to show the rules and regulations—that Mr. Light has forfeited all privileges of the reserve?

A. Please state that again.

Q. Is it a fact,—if it is permissible for you to divulge the rules and regulations of your Department—that Mr. Light has forfeited all privileges of ever grazing upon the forest reserve?

A. I haven't authority to make that statement.

Q. Mr. French, you have spoken several times about the examination of this range in view of looking at the water supply and the forage and grass. When was the first time you made such examination of the range in the neighborhood of the Light ranch?

A. In 1907.

Q. What date, approximately?
193 A. The latter part of May or first of June, I think.

Q. Did you make any more examinations that year with that special object?

A. A few days later in June I did.

Q. And when did you make your first examination of this range in 1908?

A. 1908.

Q. Yes.

A. On the 6th and 7th of May.

Q. Would you call that early spring, the 6th or 7th of May?

A. No not early spring.

Q. You have testified a number of times that in the early spring the grass upon this range was fairly good, or at least better than later in the summer. When did you ever make an examination of this range in the early spring.

A. I did not make any examination of the range earlier than the date stated.

Q. You have spoken several times of the neighbors and ranchmen in the vicinity of Mr. Light's ranch, all turning out their cattle in the early spring upon the range that we have heretofore spoken of as north, northeast and northwest of Mr. Light. Do you know anything of that, of your own personal knowledge?

A. Of their turning their stock upon this range?

Q. Yes.

A. Yes sir.

Q. Who beside Fred Light has ever turned their stock in the early spring, or any other time, upon the range to the north or northwest of Mr. Light's ranch?

A. A number of stock men living farther down Sopris
194 Creek turn out their stock in that vicinity and they drift up that way.

Q. But I understood you to say that they had turned their stock out there on this range in the early spring, not that the cattle drifted there, but I understood you—I may be wrong—that they turned them out on this range?

A. Mr. White, a stock man living in the vicinity of Mr. Light's,——

Q. How far from Mr. Light's?

A. His land joins Mr. Light's on the east.

Q. He has turned out cattle, has he, on that range?

A. To the west of Mr. Light's ranch.

Q. When?

A. Rather late in May.

Q. What year?

A. 1908.

Q. Would you call that early spring?

A. No.

Q. Has Mr. White a permit to graze upon the forest reserve?

A. He has.

Q. Who were there besides Mr. White who have done this?

A. Mr. Finley also turned some stock out there.

Q. When, Mr. French?

A. Some time in May; I could not give you the exact date.

Q. Where did he turn them?

A. In the south and west of Mr. Light's ranch.

Q. But not upon the range to the north and northwest of Mr. Light's ranch?

195 A. No, not to the north of Mr. Light's ranch.

Q. Can you name anyone else who has turned his cattle out upon the range described, besides Mr. White?

A. I could not state every one, as I have not been on the range the entire time.

Q. I understood you to testify that the custom of the neighbors was to turn the cattle out, to eat off this especial range first, and then to utilize the forest reserve under that permit; is that a correct understanding of your position?

A. When cattle are turned out in the spring of the year they

do not stay on the exact place where they are turned loose; they drift around over the range,—use the entire range.

Q. So then, they were not turned out on that range, but simply turned out in the valley and they drifted around?

A. Any range adjacent to Mr. Light's place; they were turned on ranges adjacent to his ranch.

Q. What do you mean by "adjacent," within six or eight or ten miles?

A. I mean within two or three miles.

Q. Who else besides Mr. White has turned out cattle within two or three miles northwest or north of Mr. Light's ranch?

A. As stated before, I could not tell every party, as I have not been on the range the entire time.

Q. So your statement in reference to the habits of the neighbors is, at the best, on hearsay and information?

A. Partly, and partly from personal observation.

196 Q. Whom did you observe personally?

A. I saw Mr. White drive his stock on it.

Q. So that was based on Mr. White?

A. Yes; also saw Mr. Finley driving his stock up on the range.

Q. But not upon the range line—his ranch was to the west?

A. He would naturally turn his cattle out near his ranch to the west.

Q. How long did Mr. White leave his cattle there; did he not drive them on up toward the reserve?

A. No sir, not to my knowledge.

Q. Mr. French, how does the range along the Roaring Fork Valley outside of the forest reserve correspond to the usual ranges on the western slope; is it about the same, or is it poor, or better?

A. It is about the same as the range at that altitude.

Q. So there is nothing especially difficult about this range, either in the grass or in the water, or in the topography of the country, is there?

A. Especially difficult?

Q. Yes, for cattle to subsist on, more than the usual range in that western slope?

A. Yes sir, this lower range is over-grazed,—badly over-grazed.

Q. How much of that range have you examined to know that it is badly over-grazed?

A. I have ridden over considerable of it.

Q. I understand you to have said that on several occasions when you were riding over the range you saw no cattle upon the

197 range to the north or northwest of Mr. Light's ranch?

A. I did not say that; I said to the north and northeast.

Q. To the north and northeast?

A. Yes sir.

Q. But you have seen cattle to the northwest, haven't you?

A. To the northwest and to the west.

Q. Have you seen any of Mr. Light's cattle to the northwest, or did you notice?

A. Yes sir.

Q. It is easily possible for cattle belonging to Mr. Light, if turned out on the northeasterly side of his ranch, to graze and drift over to the northwest in the direction of Carbondale?

A. No sir, the natural tendency of the stock would be to drift to the southwest.

Q. I didn't ask about the natural tendency; I asked was it easily possible for them to do it?

A. They could.

Q. Are there any difficulties in the way other than instinct, or habit?

A. Yes sir.

Q. What difficulties?

A. On account of feed.

Q. So you think that the food is so sparse that a cow would be liable to starve to death going across the country?

A. No sir.

Q. How far would they have to go from the range north of Mr. Light's ranch before they got good feed, in a southwesterly direction?

A. It gets better gradually as you go to the higher ranges.

Q. Is there any tendency for grass to come out more early
198 on the southern exposures of hills and mountains than upon northern exposures?

A. Yes sir.

Q. On what are the exposures of the Holy Cross Reserve southwest of Mr. Light's,—in which direction do the mountains slope?

A. They slope several directions.

Q. Yes, several directions, but the general trend; do they slope with the southern exposure or eastern exposure, or northern exposure?

A. A portion of that range slopes to the south and east, and a portion to the north.

Q. Well, all the range, within reach of Mr. Light's slopes to the south?

A. I don't mean the entire country slopes to the south, but there are ridges of course.

Q. But the general trend,—of course you will find the general trend of the slope,—is it not to the north and to the east?

A. More to the north and east.

Q. And most of all northeast; is that true?

A No, I wouldn't want to say the most to the north.

Q. How was the snow upon the range, the forest reserve in the vicinity of Mr. Light's ranch on the 7th day of May, 1907; was there much snow upon the forest reserve?

A. What date was that?

Q. On the 7th of May.

A. There was considerable snow in the high altitude?

Q. Is the forest reserve mostly confined to high altitude?
199 A. As a general thing seven thousand feet and above.

(Photograph marked "Exhibit F. Defendant's Proofs.")

Q. Mr. French, I hand you a photograph, Exhibit F. Do you recognize the general country there from that photograph?

A. Yes sir.

Q. That is apparently a portion of the Holy Cross forest reserve in the vicinity of the Light ranch, southwest thereof?

A. Yes.

Q. Mr. French, do you happen to know where the northeast corner of the forest reserve is? Could you locate it on that photograph or not?

A. No, it could not be located because the picture does not show the land where it is situated, does not show the country where it is situated.

Q. You could not tell?

A. No sir, it is further to the right than what the picture shows.

Q. I mean on the 7th and 8th of May 1908 you were there at that time, were you not?

A. I can tell by referring to my notes,—give the exact date.

Q. On the 6th and 7th of May 1908 what portion of the Holy Cross reserve southwest of Mr. Light's ranch was covered with snow,—or can you tell?

A. No, I couldn't tell; there was considerable snow on the high range.

Q. At that time, Mr. French, was the grass upon the forest reserve in any special abundance; was there grass on the forest reserve at that time fit for cattle?

A. I didn't go on the forest reserve at that time.

200 Q. From your experience of that country when does the grass begin to grow so as to be fit for the use of cattle on the forest reserve southwest of Mr. Light?

A. Ordinarily about the 1st of June,—from the 1st to the 10th of June.

Q. And how long may cattle ordinarily remain upon the forest reserve in that locality in the Fall; how long do they remain, or when do they begin to come out?

A. Well, they will begin to drift down probably the first of October; maybe some few earlier than that,—the latter part of September.

Q. If a ranchman should drive a bunch of cattle upon the forest reserve in the vicinity of Mr. Light's ranch upon the 1st of May in the ordinary year, in your opinion would the cattle stay there?

A. Some of them would.

Q. Would you think there would be enough grass to keep them in good condition at that time on the forest reserve in that locality?

A. That would be too early.

Q. That would be too early. Do you have any difficulty, Mr. French, in keeping the cattle up on the high slopes of the mountain sides down there in that reserve?

A. Do we have any difficulty?

Q. Yes, in keeping them up towards the timber line?

A. Not when the cows are properly salted.

Q. But you have had difficulty, haven't you, in keeping
201 them up there in the last two years?

A. No sir.

Q. How do you account for the fact that the lower range of the Holy Cross reserve this past year has been so badly over-grazed?

A. How do I account for that fact?

Q. How do you account for that fact, yes.

A. Because there has been more stock in that particular portion than should be; they haven't been properly distributed.

Q. Isn't it a fact that the cattle will themselves voluntarily return from the high hills to the lower ranges during the months of June and July?

A. From the high hills to the lower range?

Q. Yes, that is, from up near timber line down to the lower portion of the Holy Cross reserve; won't they go down there voluntarily themselves; have you had any such experience with the cattle on that portion of the range?

A. Yes sir I have.

Q. And is that your experience?

A. I am answering that question when you asked if I have had any experience.

Q. But what is the result of your experience in reference to their coming down, or not coming down?

A. A short time during the month of July it is a little harder to handle the cattle,—keep them on the higher range, on account of flies.

Q. And there is a tendency for them to drift down during that month at least?

A. If they are not looked after carefully and properly salted.

202 Q. And you didn't want it to be understood that the over-grazing of the lower ridges of the Holy Cross range were due to Mr. Light's cattle, did you?

A. In a measure, yes.

Q. About how large measure, a measure of thirteen head?

A. On account of the fact, as I stated, that Mr. Light was not grazing his cattle under permit it was much more difficult to require those that had a permit to salt their cattle and look after them.

Q. But you have this year, 1908, required them to follow your directions in regard to salting, have you not?

A. As far as we could.

Q. With whom have you failed; who has refused to obey the rules and regulations of the Forestry Department this summer besides Mr. Light?

A. One stock man refused to put his salt on the forest,—put it below the line.

Q. What was his name?

A. Mr. Frank L. Shippie.

Q. Where does he live, Mr. French?

A. He lives at Emma, Colorado.

Q. How many miles northwest from Mr. Light.

A. Between four and five miles, I should say: I could not give the exact distance.

Q. And how far from the portion of the forest reserve where his cattle were grazing?

A. How?

Q. How far did he live from where his cattle were grazing on the forest reserve?

A. Possibly three miles.

Q. Did he say that Mr. Light was the reason he didn't *sale* his cattle?

A. I didn't talk with him myself about it.

203 Q. Do you wish it to be understood by the judge when he reads this testimony that the short-coming of Mr. Shippie in regard to the salt was due to Mr. Light?

A. It was much harder to require other permittees to comply with the regulations when other parties were defying the regulations and allowing their stock to run on the forest.

Q. Please answer the question.

Mr. KNAEBEL: I object to the question as wholly improper; it is not competent to ask the witness what he wishes the court to understand; you ask him to testify to the truth,—the court will understand it.

Q. (Question read by the stenographer). Can you answer that yes or no?

A. I think I have answered the question sufficiently.

Q. You don't care to answer it any other way than what you have already answered it?

A. No sir.

Q. Mr. French, do you think it would be possible for you to give us an approximate statement of where the lines of the forest reserve are in reference to the lower limit of snow in this photograph Exhibit T?

A. Approximately, did you say?

Q. Yes, approximately, the limits of the forest reservation in reference to the snow line, the lower snow line? Is it near the snow line, or a considerable distance away from the snow line?

A. Quite a little distance; I can point on the map the approximate location.

204 Q. Is it not a fact that that photograph shows that almost the entire forest reserve was at that time covered with snow?

A. It does not.

Q. It does not?

A. No sir.

Q. Well, if you think you can, mark approximately the location of the east line of the reserve in township 9 south range 87?

A. (Witness marked as requested with a dotted line in pencil) It shows this to be very flat through here, and this is quite an uneven ridge.

Q. Mr. French, can you approximately locate the corner of the reserve that would be the southwest corner of township 9, range 86?

A. It is on a ridge, on the eastern slope of the ridge south of the McCartney ranch.

Q. It is difficult to show it on this map?

A. It is very difficult to locate it on this map because the picture shows the country as being comparatively level. It is very hard to show it there. That line that I attempted to mark on the picture is running north and south.

Q. And the approximate location as nearly as you could make it from the photograph?

A. As near as I could tell from the photograph.

Q. You spoke, Mr. French, of being familiar with the number of cattle that are by the regulations permitted to graze upon this special district of the Holy Cross reserve. How many were permitted to graze during the season of 1908?

A. Please state that question again.

205 Q. What was the allotment of cattle for the year 1908 upon this particular district of the Holy Cross reserve?

A. The number allotted was for the entire forest, and then the divisions are made, so many allotted to each district; that is, it is divided in districts.

Q. How many for this district, Mr. French?

A. Which have been permitted for this district?

Q. Yes, this year.

A. I could not state the exact number.

Q. Approximately?

A. Approximately somewhere between eight hundred and a thousand head.

Q. Can you give from the maps an idea of the extent of this grazing district?

A. Approximately three townships; that is for the entire district.

Q. The allotment fixing the maximum number of cattle upon this grazing district covered what number during 1908,—covered what number of cattle?

A. I could not give the exact number; I could give it by looking at the records.

Q. Just approximately, Mr. French, will do.

A. I think something like twelve hundred head.

Q. And how many cattle, if you know, were actually permitted to graze thereon under permit?

A. Approximately that number, or somewhere near that number.

206 Q. Mr. French, is it injurious for cattle to graze upon the forest reserve,—injurious to the reservation?

A. It depends how they graze on it. In what way do you mean injurious?

Q. Injurious to the forest's growth?

A. In some particular localities it is.

Q. It is mostly injurious to the grass, isn't it?

A. Yes sir, and if the grass is over-grazed it might be injurious to the reproduction of the young growth of timber.

Q. Is there any timber growing on the lower stretches of the Holy

Cross reserve in the vicinity of Mr. Light's ranch to the southwest?

A. There are some Aspen.

Q. How far do you have to go into the forest reserve from the easterly edge before you begin to strike real timber?

A. On what portion?

Q. Southwest of Mr. Light's ranch?

A. We find timber immediately inside of the boundary line in one place.

Q. That is Aspen?

A. No sir.

Q. Do you find some spruce and pine?

A. Find spruce.

Q. And near what section would that be if there had been a survey made?

A. It would be in section 23, town 9, range 87.

Q. Now on what would be section 2 and section 11 is there any timber?

A. On section 2?

Q. Section- 2 and 11?

A. In what township?

Q. Township 9, south range 87 in the forest reserve?

A. Yes sir.

207 Q. What character of timber?

A. Spruce and pine.

Q. Is it anywhere near the easterly boundary line of those sections?

A. In speaking of timber do you mean timber in considerable quantity or few trees?

Q. In some considerable quantity, not scattered trees, but in some considerable quantity?

A. It would possibly be a mile from the east boundary, approximately.

Q. Mr. French, if Mr. Light had paid his permit this spring for himself and son do you think the condition of the forest range would have been any different from what it is now?

A. The condition of the range?

Q. Yes, of the range; forest range upon the forest reserve would be any different from what it is now?

A. I think the cattle—I am sure they would have been in better condition if they had been properly handled.

Q. Was Mr. Light the only one who refused to properly handle his cattle on the forest reserve?

A. Mr. Light was the only one that refused to make application for permit on that district.

Q. But that does not answer my question. Please answer it.

A. Maybe I misunderstand you.

Q. (Question read by the stenographer.)

A. As I stated before, Mr. Shippie refused to put salt up on the higher range.

Q. Anyone else besides Mr. Shippie?

A. Not that I recall.

Q. Have any of the ranchmen or cattle owners in the
208 vicinity of Mr. Light refused to take out grazing permits on the Holy Cross reserve in the year 1908?

A. I have had considerable trouble with some.

Q. Have any of them refused besides Mr. Light, within eight or ten miles of Mr. Light, on either side?

A. Yes.

Q. Who?

A. Mr. Harris refused.

Q. Has he taken out his permit?

A. No sir.

Q. Has he run any cattle?

A. Does he run any cattle?

Q. Yes sir.

A. Yes sir.

Q. Are any of them on the forest reserve?

A. Yes sir.

Q. Where does Mr. Harris live?

A. He lives near El Jebel on the Midland.

Q. How far is that from Mr. Light's place?

A. I could not state the exact distance; it was ten or twelve miles, possibly twenty.

Q. Do you remember or recall anyone else who has refused to take out a permit?

A. Some others have declined, but have lately, that is, afterwards, made application.

Q. You think that grazing upon a forest does not, as a rule, damage a tree except where the grazing has been very excessive?

A. No, it is only where grazing is excessive.

Q. Now is there more grass up amongst the trees on the Holy Cross reserve, or is it on the lower slopes where there are few, or no trees?

209 A. On the more open ridges, on the higher ridges.

Q. Are the open ridges all below the thick growth of trees in altitude?

A. Not necessarily.

Q. Well, where is the best grass on the Holy Cross reserve in this vicinity, lower down or higher up?

A. At a higher altitude.

Q. And during what portion of the year may cattle stay up there and graze profitably?

A. From June until the latter part of October.

Q. Does the grass grow under the trees?

A. No, grass does not grow under the trees.

Q. So there is very little eating of grass by cattle in the thick forests of the forest reservation?

A. There are open parks in the timber, and in those parks the feed is very good, as a general thing.

Q. And the cattle eat in the open parks?

A. Yes sir.

Q. And so that don't hurt the trees very much?
A. They run through the timber a great deal.
Q. Do you know how many cattle were allotted by the entire Holy Cross in 1908, approximately?
A. I think fifteen thousand head.
Q. Do you know approximately how many cattle — have been given permits upon the Holy Cross reserve the past year?
A. I could not state without referring to the records.
Q. Was it anywhere near the limit do you think?
A. I think not.
Q. If Mr. Light had paid his permit, would that have over-crowded the forest range in this vicinity?
A. You are speaking of 1908?
210 Q. 1908, yes.
A. Not necessarily.

Mr. WARD: Mr. French, if convenient, I wish you would get those figures for me as to this district adjacent to Mr. Light, and also as to the entire Holy Cross reservation, if possible.

Q. You spoke, Mr. French, about a meeting at Basalt where Mr. Light persuaded his fellow cattle men not to take out permits, and a paper was signed something to that effect. Have they kept their promise those men?
A. No sir, not all of them.
Q. Did you have any idea why they didn't keep their promise?
A. That would be pretty hard for me to state.
Q. As far as you know from your own actions, and the actions of your subordinates, were any threats made of suit or arrest of those men during the past year?
A. No sir, not as far as I know.

Whereupon, the hearing was adjourned until Saturday the 26th day of September, A. D. 1908, at the hour of nine o'clock A. M.

Pursuant to the foregoing adjournment the parties appeared by their respective solicitors on Saturday the 26th day of September, A. D. 1908, at the hour of nine o'clock A. M., the complainant appearing by Ernest Knaebel, Esq., and the defendant appearing by Ethelbert Ward, Esq., whereupon the following proceedings were had:

Cross-examination of HARRY H. FRENCH resumed.

By Mr. WARD:

Q. Mr. French, please explain why it is considered neces-
211 sary be your Department that salt should be placed upon the reserve?
A. In order to hold the cattle on the higher range.
Q. And it has been your experience that if salt is not placed upon the higher range they will come back to the lower range and over-graze that?
A. Over-graze it, yes, and the season of course is shorter somewhat

in a higher range and you want to take advantage of that, and of the better feed.

Q. And to keep them up there as long as they will?

A. Yes sir.

Q. Mr. French, in reference to the conversation you had with Mr. Light shortly before the Denver Public Lands Convention of last year, where you notified him to remove his cattle from the range. I believe that the testimony was that you did notify him at that time, and there was a specified time in that notice within which he should take his cattle off. Was that three days, or six days' time?

A. Six days' time, as I recollect it.

Q. And it was after a conversation with Mr. Light that the time was changed, wasn't it?

A. Yes, sir, he was given ten days' time; he said that he had to attend a Convention, and he was late with his crops, and with irrigating and the like of that, and it would be impossible, or practically impossible for him to comply with that request in such a short time.

Q. Did he also say that he hoped to arrange with Mr. Pincho for a test case upon the question of grazing?

A. I don't recall that any test case was mentioned.

212 Q. Do you recall any conversation to the effect that he hoped to arrange with Mr. Pincho while here to settle this question of the grazing?

A. Yes, there was something of that sort said; I could not state the exact words.

Mr. WARD: That is all, Mr. French.

Redirect examination.

By Mr. KNAEBEL:

Q. As I understand it, Mr. French, the idea of requiring salting upon the higher portions of the forest range is to utilize the good feed up there to the maximum, reserving the good feed on the lower forest range for later in the season when the higher range is not available because of snow?

A. Yes, sir, that is the object.

Q. And what, if any, effect has the refusal of Mr. Light to submit to the regulations, and his attitude in regard to leaving his cattle on the reserve without permit had upon your ability to induce or persuade those who have taken out permits to use the range in such a way as to equalize the grazing?

A. Well, I didn't feel in position to require as much from those who had permitted stock for this reason, that unpermitted stock were running on the forest,—grazing on the forest.

Q. And those stock would do what if you should require the permittees to range their cattle high, the trespassing stock would do what?

A. They would graze lower; and they didn't feel that that
213 would be treating them fair to compel them to put their stock up on the higher range, and others could leave theirs lower down, or save the range for late feed.

Q. One question about the likelihood of cattle getting over into the Roaring Fork or Capital Creek valleys when turned out from the northeast of Mr. Light's ranch. How about that?

A. The cattle would drift the other way; there is no open range to the east from Capital Creek on account of the land being nearly all fenced, patented land.

Q. And is there also a divide there?

A. There is a very high divide between Mr. Light's place and the Roaring Fork, very steep to the east and north.

Q. Is it passable by cattle?

A. Well, it is not practical for them to work over in that country, it is too steep.

Q. You might possibly drive them over but they would not go voluntarily; is that what you mean?

A. No, not voluntarialy.

Recross-examination.

By Mr. WARD:

Q. Is Exhibit G. the form of the grazing permit now used by your Department, and used in the Spring of 1908?

A. Yes sir.

GIDEON COOKMAN, a witness called on behalf of the complainant, being duly sworn, testified as follows:

214 Direct examination.

By Mr. KNAEBEL:

Q. How old are you, Mr. Cookman?

A. Well, sir, I was born in 1860.

Q. Where do you live?

A. I live at Snowmass, post-office address, and Capital Creek; I live on Capital Creek.

Q. Have you a ranch up there?

A. Yes sir.

Q. How near to Mr. Light's place?

A. Well, sir, I join Mr. Light on the east,—or west of my place.

Q. And what business do you conduct on your ranch?

A. Oh, I cure some hay and raise a few cattle.

Q. How many cattle have you?

A. Oh I have got about fifty I guess, somewhere along there.

Q. How long have you known Mr. Light?

A. I have known Mr. Light for twenty years, I guess.

Q. Did you used to work for Mr. Light?

A. I did.

Q. For how many years?

A. I worked for him off and on for three years, I believe.

Q. On the ranch where he now is?

A. Yes sir.

Q. How long have you lived in that vicinity there,—the Roaring Fork Valley?

A. Well, sir, I have lived there since 1887.

Q. Have you had much familiarity with the business of raising cattle,

A. Oh, a little.

Q. For how many years?

A. Ever since I have been in the country, since 1887.

215 Q. Do you know what the custom of all the neighbors there has been, about the time of turning out their stock?

A. Yes sir.

Q. And where the stock have grazed each year?

A. Yes sir.

Q. What has that custom been; what have they done each year in regard to turning out their stock?

A. Well, when Spring comes along from the middle of April to the first of May along, why we turn out.

Q. Where do you turn out?

A. Well, we turn out up Capital Creek and on Sopris Creek.

Q. On the vacant public land?

A. Yes sir.

Q. And you may state if you will what cattle do each year after you turn them out?

A. Well, sir, we turn them out—sometimes we turn them up Capital Creek and they come back down, and then we will fire them over on Sopris Creek, and probably then they will work back, around back on to the range up high.

Q. Please look at this map Exhibit 1. Now you see where the forest is marked on that map in the southwest corner, the green line?

A. Yes here is the Sopris Creek.

Q. Do you see where Mr. Light's ranch is marked?

A. Yes,—yes I see here what you mean,—you have got that marked.

Q. Now state what the habits of cattle are each year when turned loose from the ranches around Mr. Light's there; where do they go finally?

A. Why they will go—some of them will go down Sopris

216 Creek, and some will go around up Sopris Creek, and they will scatter all over the country there.

Q. And where do they get their summer feed?

A. Why they generally get their summer feed up on the reserve.

Q. Well, what proportion of the cattle remain down on the lower range on vacant public land?

A. Oh well there is at times probably you will see a big bunch of cattle maybe this week, and the next week, say, you won't see any at all.

Q. What will become of them?

A. Well, they drift up on the range you know, get higher up in the mountains.

Q. Now referring to that vacant public land that lies north and northeast and northwest of Mr. Light's place there—do you know that range?

A. Yes sir.

Q. Will you state how many persons use that range for their cattle in the spring?

A. Well there is of course the cattle that is turned out in the Emma country, there is a good many of them work up that way, and Mr. White turned some cattle in there, and I turned some in there last Spring below Mr. Light's ranch right there; let them go below his place.

Q. So that Mr. Light does not have the sole use of that range?

A. Oh no, no, he don't have the sole use of it.

Q. For how long a time in the spring is that range good?

A. Well it is—of course it is a great deal owing to how many cattle there is on it; there are times when there may be two
217 hundred or two hundred and fifty head of cattle in there for a few days; they will soon drift out down Sopris and up Sopris Creek, you know. Of course the feed gets short in the Spring.

Q. Now take two hundred cattle,—how long would that range that I have spoken of support two hundred cattle in the spring?

A. Well, take it south and west of Mr. Light's?

Q. No, not south and west, but north?

A. Yes, and north, well, two hundred head of cattle north of Mr. Light's wouldn't stay there over probably thirty days at the outside, I should judge.

Q. What is the reason?

A. Well, they drift out and go to better feed, you know; they would make the feed very short inside of thirty days, I think; that is north of Mr. Light's between there and the Roaring Fork.

Q. Now can you just state where they would go to from the habits, and the ground and feed?

A. They would mostly drift up Sopris Creek from there.

Q. Well, they could not follow the stream exactly, could they?

A. Oh No; they would follow the range up, probably go down Sopris maybe half a mile, and then drift up and go into Hay Park country and on to the reserve and in there.

Q. Are there any cattle trails that pass anywhere near to Mr. Light's place?

A. Yes sir.

Q. State where they are?

A. Well, there is cattle trails come around above Mr.
218 Light's ranch, and above Findley's, and on to the Creek in the Sopris country,—Hay Park and all through there.

Q. And where do those trails end,—lead to?

A. Well they just—they will probably—you will strike a big trail here, and also up in here and here, and then they will scatter,—they will scatter out cattle naturally scatter, you know.

Q. You say "up in here," what do you mean?

A. I mean up above Findley's and Dougherty's—that country.

Q. With reference to the forest reserve, where?

A. Into the forest from Mr. Light's into the forest going south.

Q. When you spoke of going up Sopris Creek do you mean in the direction of the compass?

A. Well, that is southwest.

Q. Up the stream?

A. Yes sir.

Q. Now down Sopris Creek is there any grazing to amount to anything?

A. Well, yes sir, there is some grazing down Sopris Creek too.

Q. To what extent can you graze cattle down there, and for how long?

A. Oh, well, the cattle don't stay on Sopris Creek very long down there, they generally go up and drift up, you know.

Q. What is the reason they don't stay down there?

A. Well, I suppose probably the feed may get short and they naturally drift up, the cattle.

Q. Well, now, that grass that grows on the open range around Mr. Light's, and in Sopris Creek north of his place, all in that open public land there has been called "blue-stem." Why? Is that what it is mainly?

219

A. Yes sir, it is mainly, I believe, blue-stem through there.

Q. Is it very thick on that range?

A. No it is thin.

A. And what kind of grazing is there on that range after the hot weather comes on, dry weather?

A. Well, it is generally pretty poor.

Q. And what is the condition of that range each year after the cattle that are usually turned upon it by the neighbors there have been upon it, at the time when the hot weather comes on?

A. Well, it is generally very poor on the range at that time.

Q. How about the water?

A. There is plenty of water in Sopris Creek.

Q. Is that the only place where they get water?

A. Well, what stock stays on that place north of Mr. Light's on that ridge, then generally they water at Sopris or Capital Creek.

Q. Now how many cattle stay on that range throughout the summer?

A. Oh, well, there isn't very many cattle stays there generally through the summer on that range.

Q. Approximately, how many would you say?

A. Well, probably maybe twenty-five or thirty.

Q. Is there any ground upon which you can account for the fact that twenty-five or thirty cattle would stay there while the rest would all go up on to the forest; is there any difference in the cattle, or how is it?

220

A. No, I don't think there would be much difference in the cattle in that small bunch that stay in there. I don't think there would be very little difference in the cattle, if any.

Mr. WARD: We object to the question and answer for the reason that it is assuming in the question that the balance of the cattle go on the forest reserve.

Q. Where do the balance of the cattle go?

A. Well, they probably some go on the reserve, and some are below the reserve.

Q. You say "probably," Mr. Cookman.

A. They are in different places, the cattle would be, of course. We used to generally drive them up high, you know, but they haven't been driven up for a year or two; I don't think they have been driven out of that country in there for three years. I believe the first summer of the forest reserve the cattle was driven out, and up on the high range, but they haven't been since.

Q. You mean up very high?

A. Yes sir.

Q. Referring to the regions that Mr. French testified to a moment ago where he said that he wanted to have them salt up there?

A. Yes, they were put up high in 1906.

Q. You know about where the forest line is on the east, or just west of Mr. Light's place?

A. Why I know about where it is in one place.

Q. Well, if it runs north and south, due north and south,
221 there, then you have an approximate idea of where it runs, have you?

A. Yes I have.

Q. On that map you see it is about a little over two miles to the west of Mr. Light's. Now I wish you would describe a little more fully any trail, if there is such, which passes near Mr. Light's place on its west side—cattle trail. Do you see one marked on the map?

A. Yes, I see here where there is, I guess, two different trails marked on the map here, or three.

Q. Will you state whether or not there are such trails on the ground there?

A. Yes sir, there are such trails on the ground there.

Q. Are they difficult to find, or are they well worn?

A. Well, they are well worn, especially I know the one is that goes around above Mr. Light's ranch there, and Mr. Finley's place.

Q. And is that the one that goes around the northwest corner of his place?

A. Yes sir.

Q. Just describe where that starts, as nearly as you can?

A. Well, it starts in below Mr. Light's ranch near Sopris Creek,—on the creek, and starts out up the hill around there.

Q. And does it just turn around the corner of his fence?

A. Well, it goes around the corner of his fence there, and there is a cliff above his fence west that they can go around and go up or down.

Q. Well, then, does it pass down near his place on the west?

A. On the west?

222 Q. Yes.

A. Yes, it goes around above his ranch on the west, goes around above the ranch and above Findley's ranch and goes out on the range.

Q. Now if you were to follow that trail going towards the southwest would there by any fences near to it?

A. There would be a fence along a little ways from the trail east of Mr. Light's fence and Findley's and Dougherty's ranch.

Q. That is, you would have fences on your left, would you?

A. Yes sir.

Q. And what would be on your right: would there be a hill?

A. Yes sir, there would be a hill.

Q. Now if you went along that trail how far would those fences continue?

A. Well they would continue for a mile and a half or two miles up Sopris Creek.

Q. And would the water be accessible to the cattle there?

A. Well yes, there is some water in between about half way across between, probably three-quarters of a mile further there is water in the gulch.

Q. Does that stay there all the year?

A. Well I think so,—it is to a certain extent.

Q. Is it sufficient for many cattle?

A. Well, I don't know how many cattle it would water there; probably it would water fifty or one hundred cattle maybe all through the summer.

Q. Now just tell us how that trail goes, through what kind
223 of country, before it passes from the forest line there?

A. Until it gets to the forest line?

Q. Yes sir.

A. Well it goes over the hill just of course into gulches and little open parks, you know, until it gets into the reserve, the trail does. Of course it is a hilly country, you know, it is a rough country through there, it is rocky,—some places are rocky and some are smooth.

Q. Is there anything about the country there which would tend to keep cattle on the trail?

A. Nothing whatever, they can either go on the trail or they can go off of the trail; they can go off out of the country either way; there are different trails there through that hill.

Q. The rising ground tends, as I understand it, up toward the forest?

A. Yes sir.

Q. Now what happens to the grazing as the weather gets warmer?

A. The cattle naturally work up as the snow goes off,—follow the snow up.

Q. And you will state again, if you please, why it is that they work up?

A. Well, I suppose it is better feed.

Q. Well, now, you know about that, do you?

A. I think so, yes sir.

Q. Is there much, if any, good feed left on the lower range as they work up?

A. Well, it is generally eaten off pretty close as they work up here the general thing the feed gets better on the lower ranges after the cattle have left the lower range—it generally gets
224 better through the summer.

Q. Do you know where Mr. Light has been accustomed to range his cattle,—taking 1906, 1907 and 1908?

A. Well, I have seen his cattle on the range there,—Sopris Creek and Capital Creek,—head of Sopris and Capital.

Q. Did you ever see any of his cattle on the forest?

A. Yes sir.

Q. During what years?

A. For the last ten or fifteen years, ever since I have been in that country and I have been on that range.

Q. You yourself have complied with the regulations in taking out a permit from the Government for that stock on that reserve, haven't you?

A. Yes sir.

Q. Did you see any of Mr. Light's cattle on the reserve this summer?

A. Yes sir.

Q. How did you come to go up there?

A. Oh, riding after horses is the only way.

Q. How many times did you see them?

A. I have seen them two or three times.

Q. And about how many cattle?

A. Oh, I don't know, probably—maybe I have seen fifteen or twenty of them on the range.

Q. You don't know whether you saw the same cattle each time, or not?

A. No sir, I don't.

Q. Did you see any of his horses up there?

A. Yes sir.

Q. You know his cattle and horses, do you?

A. Yes sir.

Q. About how many horses of his did you see up there?

A. Oh, well, I don't know, I didn't count them at all,
225 but I have seen several of his horses on the range.

Q. On the forest?

A. Yes sir.

Q. How about last year?

A. I see them last year.

Q. Same way. At different times?

A. Yes sir.

Q. If you know, state what Mr. Light's custom has been in regard to the place where he turns out his stock in the spring?

A. Well, sir, I think his custom,—as near as I know the cattle, whenever they want to go out can go right out on the range from Mr. Light's.

Q. Now please explain that; how could they get through the fence?

A. The fences in the country are generally down in the spring in the Capital.

Q. Mr. Light's?

A. Well, on all of the ranches, in fact, not Mr. Light's ranch any more than maybe anyone's.

Q. Do you mean by that, that he leaves his fences down?

A. Yes sir, our fences are generally down in the spring of the year.

Q. I want particularly to know about Mr. Light's fences, if you please?

A. Well, I have noticed Mr. Light's fences a good deal that way too.

Q. On each side of his ranch?

A. Well, on the northeast side of his ranch.

Q. Did you ever notice the southwest side?

A. No, I have not noticed the southwest side, for I never was over in there in the spring.—I couldn't say to that, but I
226 have noticed the gaps along on the northeast, why, that goes out on that hill there in the winter; why they are generally open all winter, cattle go out there and sleep under the trees, and it is a protection for the cattle.

Q. Do you know where Mr. Light has generally turned his cattle out, at what place.

A. No, I do not; of course he used to turn out—we used to turn our cattle, when I worked for Mr. Light we turned them up Sopris Creek out on the west,—southwest, they went out that way.

Q. Now if cattle go in that region on the vacant public lands there, which appears on that map to the north of the forest, what kind of a range do they find there? Not in the forest, but right north of it, and west of East Sopris Creek?

A. Well, they would find some very good range through there in the spring.

Q. And in the hot summer months, how about that?

A. Well, it is dry and barren, a good deal of the lower country.

Q. What do the cattle do that stray in there?

A. Well, they generally come out of there when the feed gets short and go on to the range, you know.

Q. When you say "the range" you mean the forest range?

A. Yes sir I do.

Q. Have you ever heard Mr. Light make any statement about whether or not he would take out a permit for his cattle?
227 A. Well, I have heard it, yes.

Q. When?

A. I heard it in the Association at Basalt one time.

Q. Did you ever hear it at any other time?

A. Not from Mr. Light I never did.

Q. Did you ever hear other people talk about it?

A. Yes sir I have.

Q. Is that a matter of common notoriety up there?

A. Yes sir, it was.

Q. And how about his persuading any one else, or in trying to persuade any one else not to take out a permit? Do you know anything of that?

A. No sir, nothing more than in the Association we were taking out no permits.

Q. What did he say up there?

A. Well, indeed I couldn't tell what he did say in the Association at all.

Q. Well, just the substance of it, not the exact words?

A. I know they had a petition in for to sign not to take out permits you know, and he was advocating that strong.

Q. Did he ever advise you not to take out a permit?

A. No sir, I don't think that he ever did.

Q. Did he ever come to you and say anything to you about the subject?

A. Well, I think we did have a talk about it once, but what Mr. Light said to me I could not state now for I don't remember exactly what he said to me about the permit; it was a very few words I know,

Q. Did he tell you that he intended to take out a permit?

228 A. No sir, he did not.

Q. What I am getting at, Mr. Cookman, is as to whether you have ever heard Mr. Light on other occasions at Basalt give out either to you individually or to others that he would not take out a permit?

A. I have.

Q. How frequently?

A. I never remember any but once, that was at Basalt at the Association,—Stockgrowers' Association.

Q. You never had any conversation with him on the subject, then?

A. No sir, never did.

Cross-examination.

By Mr. WARD:

Q. Mr. Cookman, the conversation that you have heard with Mr. Light in reference to taking out permits was based upon Mr. Light's contention that these permits were unlawful, was it not?

A. Yes sir.

Q. And in violation of his rights as a citizen?

A. Yes sir.

Q. And unreasonable?

A. Yes sir.

Q. And that he was not going to stand for it?

A. Yes sir, that was it.

Q. You know something about the regulations, and are a cattle man aren't you?

A. Yes sir.

Q. Do you think they are unreasonable?

Mr. KNAEBEL: That is objected to as manifestly incompetent.

229 Q. Answer the question?

A. Well, I think they probably are unreasonable.

Q. Why did you take out a permit?

A. Well, I was afraid I might get into trouble, to tell you the fact—I wasn't going to take no chances.

Q. Mr. Cookman, you have worked on that ranch, I understand, some twenty years?

A. Yes.

Q. And you helped Mr. Light handle his cattle?

A. Yes sir.

Q. Do I understand you to say that the custom of former years was for Mr. Light to drive his cattle away from the immediate vicinity of his ranch up East Sopris Creek?

A. Yes sir.

Q. Why was that done?

A. Well, we would generally put them up there for better feed, you know.

Q. Did the fact that feed was desirable near the ranch in the winter time have any effect?

A. Yes sir.

Q. Did you not have an object in preserving the feed immediately around the ranch?

A. Yes sir, I did.

Q. Why?

A. Well, it saved us feeding hay, you know, all the fall.

Q. In the winter time?

A. Yes sir.

Q. You say that even now Mr. Light's practice is to leave his pasture north of his house and northeast of his house open so that they can go in and out upon the range in the winter time?

A. Yes sir.

Q. And so there is feed even now in the winter time upon the range near his ranch?

230 A. There is lots of browsing in there in the winter.

Q. And you have *have* helped Mr. Light drive his cattle up East Sopris Creek into what is now the Forest Reserve?

A. Yes sir.

Q. Would the cattle stay there voluntarily, of their own accord?

A. Well, yes, they stay pretty well up there.

Q. Do you not remember of sometimes having to make two or three drivings in the year?

A. Yes sir.

Q. They would come back, then?

A. Come back sometimes.

Q. Why wouldn't the cattle stay up on that excellent grazing on the high reserve?

A. I guess they get kind of accustomed to hanging around the ranches there, and they would follow back,—they will do it yet.

Q. Just the habit of the creature?

A. Just a strange habit of the brute.

Q. And if you put a herd of cattle upon a field of timothy without a fence around it will they stay there?

A. Well, they are not likely to very long.

Q. Now you are quite familiar with that country over there that we have spoken of, as to the Roaring Fork country from Aspen to Glenwood Springs, are you not?

es sir.
there anything that would prevent cattle from straying and from Mr. Light's ranch in either direction for any distance?
A. No.
Q. How far could they graze and stray without damage o themselves in the direction of Aspen without getting on st reserve?

KNAEBEL: This is objected to unless it is to inquire whether at to know how far the ground is unobstructed, or how far nd affords a proper feed for the cattle.

ell, now, I don't know where the forest reserve line runs ve there at all.
d isn't it a fact that they could stray and graze profitably o Aspen?
s sir.
the valley,—almost to Aspen?
s sir.
it not true that they could stray and graze profitably to es and keep in good condition, clean down the valley to l Springs?
s sir, they can.
d to Carbondale?
s sir, to Carbondale.
d is it not true that a large portion of Mr. Light's cattle, as he cattle of other people in that neighborhood, do graze n the Crown country?
sir.
at is the Crown country, Mr. Cookman?
e Crown is a big country.
t lies between Sopris Creek proper, doesn't it, and Crystal
sir, it does.
ris Creek on the west,—Sopris Creek on the east and Crys- n the west and Roaring Fork on the north?
sir.
at fairly good grazing in that country?
A. Yes sir, I think so.
Q. Cattle in years past and now have grazed upon that ntry during the entire season, have they not?
sir.
ng the past years, say some ten years ago, how many ranged in that Roaring Fork Valley as compared to the more or less?
, I believe there were more cattle.
ose days. Do you remember of Price Schloss ever having nch of cattle in the Crown country, and on the range and north of Fred Light?
ir.
t how many do you know of his having had there, in r?

A. Well, I have known him to have as high as six or seven hundred different summers.

Q. Different summers?

A. Yes sir.

Q. Possibly he may have had as high as eleven hundred, do you recollect, one season?

A. No.

Q. Do you remember that R. H. Tucker ever ran any cattle there on that range at the time that Schloss was running cattle?

A. Yes sir, I do.

Q. How many do you remember of his having run there in various summers?

A. Well, all the way from five to seven hundred.

Q. And during those same seasons was Mr. Fred Light running any cattle upon this same range?

A. Yes sir, he was.

Q. How many would his cattle average in years past during the different seasons?

A. Well, they would average from two to five hundred.

233 Q. Do you remember of Mr. Zimmerman ever running any cattle on that same Crown range above Mr. Light's?

A. Well, yes, that is west of Mr. Light, you know,—West Sopris and through there.

Q. In the Crown country?

A. Yes sir.

Q. How many cattle would he ordinarily run there on that same range?

A. Well, indeed now I could not say about how many, Mr. Ward.

Q. He had a bunch of cattle there?

A. Yes sir; I don't know how many cattle Zimmerman run in there, but I remember Zimmerman run cattle in there all right.

Q. Do you remember Mr. Chatfield running cattle in there during the same period?

A. Yes sir, I do.

Q. How many would Chatfield run there?

A. Well, sir, Chatfield, I believe he had probably from six to eight hundred head,—somewhere along there.

Q. And some seasons probably more, wouldn't he?

A. Yes, would have maybe more, I don't remember just how many Chatfield did put in there first, it may have been a thousand head Chatfield put in there, but I couldn't say to be positive about the number of head.

Q. Now during the year 1908 were there as many cattle on this same range as there were in the time you have just been mentioning, when Chatfield and Schloss ran these large bunches?

A. No, there is not.

Q. Does Schloss run,—did he run any cattle on that range

234 in 1908, this year?

A. I don't think so, I never heard of any.

Q. Do you know whether Chatfield ran any cattle on this same range this year?

A. No sir.
Q. And how about Tucker?
A. Not any.
Q. How about 1907 on Schloss running cattle there?
A. Don't think Schloss had any there in 1907.
Q. And Chatfield in 1907?
A. No sir.
Q. Tucker?
A. Tucker I believe had some cattle in there in 1907.
Q. How many cattle, Mr. Cookman, if you know, were grazed this summer on the range we have just been speaking of, and the forest reserve immediately south and southwest of this range?
A. Well I could not say.
Q. You could not say?
A. No sir, I could not.
Q. Were there as many cattle, in your opinion, grazed this summer as there used to be in the district when Schloss and Tucker and others ran their bunches?
A. I don't think there is.
Q. Were the cattle that were handled by Schloss and Tucker and Chatfield good, marketable cattle when the fall came on?
A. Yes sir.
Q. Did they get fat?
A. Yes sir.
Q. Did many of them starve to death for want of water along that range?
A. No sir.
Q. Did they starve to death for want of grass?
A. No sir.
Q. They of course would drift around in all directions?
A. Yes sir.
235 Q. I understood you to say, Mr. Cookman, that it is the habit of Mr. Light, and possibly others, I think yourself——
A. Yes sir.
Q. (Continuing:) —in the early spring to turn your cattle out to the north and northwest of Mr. Light's ranch?
A. Yes, on that side.
Q. Why do you do that, Mr. Cookman?
A. Well it is early feed, you know, it is about the first of it we have in the country.
Q. And why is it the grass comes earlier there?
A. Well, the snow don't lay on the hills so late.
Q. And what is the exposure of that ground, how does it slope; has it a northerly exposure or southerly exposure?
A. Southerly.
Q. And you say the grass comes out there earlier than other portions of the range?
A. Yes sir.
Q. And of course the grass is eaten there first because the cattle are about there first?
A. Certainly.

Q. I understood you to say that later in the summer feed gets better there?

A. Yes sir, generally gets better there in the summer.

Q. So that what is the condition there this year now at this time as to the feed compared with the early spring; I mean compared with, say, about the latter part of May?

A. Indeed I haven't been on that hill this summer, I couldn't say.

Q. Is that range in approximately the same condition as it was six to eight years ago, as far as grass is concerned?

A. I don't think it is quite as good, probably.

Q. Is there any very marked difference; is it hurt very
236 much; is it much poorer than it used to be?

A. I don't think it is very much poorer.

Q. Just as much water there as there used to be?

A. Yes sir, the water is there.

Q. There don't as many cattle stay there as they used to, do they?

A. No I don't think they do.

Q. What is the reason for that, Mr. Cookman?

A. Well, I could not say, probably they are cattle that has been raised and kept there, and they naturally go up higher in the summer.

Q. Would you attribute it to the fact that there is every effort being made on the part of the Forestry Service to get people to pay for, and keep their cattle on the Forest Reserve?

Mr. KNAEBEL: I object to that as incompetent, and does not tend to assist any issue in this case whatever.

Q. Well, I know we pay for cattle, but that is up to us whether we keep them on the forest reserve or not.

Q. Do the forest rangers assist you in keeping them there to any extent?

A. They do.

Q. Do they put salt up on the range?

A. No.

Q. They make you put salt there, do they?

A. Yes sir.

Q. Where do they make you put the salt, high up or low down?

A. High up.

Q. Why, Mr. Cookman?

A. Well that is to keep the cattle up there.

237 Q. Wouldn't they stay up here if it wasn't for the salt?

A. Well not so well, I don't think.

Q. So there is an effort being made by the forest rangers to keep the cattle, if possible upon the forest reserve?

A. Yes sir.

Q. And do you think that is one reason why there are not so many cattle down on the lower ranges now?

Mr. KNAEBEL: I object to that question as incompetent.

A. Yes sir, I think it is.

Q. Cattle can't stay in two places at one time?

A. No, cattle can't stay in two places at one time.

Q. I suppose they come very near doing it, though?
A. Yes, they do, I guess.
Q. Mr. Cookman, you said something about ranger Cyphers driving some cattle up into the reserve,—cattle which had permits?
A. Yes sir.
Q. When was that done?
A. That was in 1906.
Q. Do you know of any of the forest rangers assisting in driving other cattle with permit upon the reserve since then?
A. Yes sir.
Q. Of this year?
A. Yes sir, some this year.
Q. In any large bunches?
A. Well, probably from fifty to sixty head, or something of that kind.
Q. Would it be possible in driving through that country covered with scrub oak and aspen that Mr. Light's cattle might have
238 been driven along with some of those bunches?
A. Those what the forester drove this year was on Capital Creek,—gathered them all along the road and drove them up on to the range, cattle that had come back from the range on to Capital Creek.
Q. So they had left the forest range and come back?
A. Come back home.
Q. Now do you think it is possible, Mr. Cookman, that some of Mr. Light's cattle might have been driven along with that bunch?
Mr. KNAEBEL: I move to have the question stricken out as utterly unwarranted.
A. I couldn't say, I don't know.
Q. Mr. Cookman you have said, I think, there is plenty of water upon this range north, and northwest, and further to the northwest of Mr. Light's?
A. Yes sir. Water all through there.
Q. Is the water so distant on that range, so far away from the middle of the ranges as to be harmful to cattle for them to go to water?
A. I don't think so.
Q. Will it hurt a cow to travel two or three miles for water,—drift and graze two or three miles from water?
A. I don't think it would.
Q. Is East Sopris Creek inaccessible for cattle northwest of Mr. Light's ranch?
A. No sir.
Q. They can get water at almost any point without difficulty, can they not?
A. Yes sir.
239 Q. Now, Mr. Cookman, as a matter of fact all through that sagebrush country and all through the entire western country there are trails leading in almost every direction, aren't there?
A. Yes sir.

Q. Many of them what they call blind trails?
A. Yes sir.
Q. You will follow them a hundred yards and then they will just disappear?
A. Yes sir, a great many of them, too.
Q. And these blind trails, and trails are found practically in all portions of the range?
A. Yes sir.
Q. The trails of course are more distinctly marked close to the creeks?
A. Yes sir.
Q. How do you think it happens that they are more distinctly marked there?
A. Cattle going in to water.
Q. What is the habit of cattle when they go to water, follow trails or scatter along?
A. They follow the trails going to water.
Q. Will there be a string of cattle one behind the other?
A. Yes sir.
Q. And when they get through watering how do they go back?
A. Ordinarily graze back.
Q. Scatter out?
A. Yes sir.
Q. So that trails that have not been formed by buffalo and deer but have been formed by cattle, in your opinion, are mostly formed by cattle coming in to water rather than going out from water?
A. Yes sir.
240 Q. Of course when the fence has stood for a number of years in any portion of the range there is always more or less of a trail along that fence?
A. Yes sir.
Q. And I suppose you have noticed that there are some trails or tracks along the fence beginning from Mr. Light's north fence, running along clean as far as the fences go?
A. Yes sir.
Q. And there will be necessarily more or less blind trails and other trails that branch out?
A. Yes sir.
Q. And those trails were there how long ago,—twenty or thirty years ago?
A. Yes sir, been there for years.
Q. And some of them were formed before cattle ever came to that country,—you couldn't say that?
A. I wasn't in here before that.
Q. Mr. Cookman, you spoke of one especial trail as being pretty well defined and well worn leading in the general direction of the forest reserve. Where was that trail that you had reference to?
A. Where was it?
Q. Yes, where is that trail, rather?
A. It runs south from Light's and Findley's ranch in there, that

hill there is a good trail all the way through there—always has been for years.

Q. How does it run with reference to the fences or ranches up East Sopris Creek?

A. Well, it probably runs in places from three to eight hundred yards above the fences, you know, maybe a quarter of a mile,
241 or a half in some places you will find the trail.

Q. And how far, Mr. Cookman, is that trail a well defined trail before it begins to branch out?

A. Well, of course it branches out, begins to branch out even from the start, but there are pretty well defined trails, in fact, clear through to the top of the hill either way you want to go you will find trails.

Q. To the top of the first hill?

A. You can run clear through to the reserve on the trail south from that country in there from Sopris Creek.

Q. And you can branch off from that trail and run again on single trails?

A. Yes sir, you can go anywhere in that country there mostly on a trial.

Q. So that the trails spread out like the fingers on a man's hand in two directions?

A. Yes, sir, a good deal so.

Q. Mr. Cookman, did you notice any especially well defined trail leading into the direction that is marked upon this top trail here on the map?

A. Yes, I guess that trail is all right there too.

Q. And probably a dozen more trails there?

A. There are, there is two or three more in there.

Q. And running to the direction of the northwest?

A. Well, I don't know just which direction they run particularly, but there are trails through there, plenty of them.

242 Q. All through the sage-brush, oak and aspen?

A. Trails running in all directions, yes sir.

Q. Mr. Cookman, is there not a good wagon road running down East Sopris Creek through this range north and northeast of Mr. Light's ranch,—north and northwest of Mr. Light's ranch?

A. From the Hay Park?

Q. No, going down to Emma?

A. Oh yes.

Q. There is a good wagon road there, isn't there?

A. Yes sir.

Q. And when cattle begin to wander and stray from the territory immediately north of Mr. Light's ranch, would the fact that the road is there have any tendency to make them go down Sopris Creek?

A. They travel the road least in the Spring up and down.

Q. Would there be more of a tendency to follow the road than to follow these blind trails?

A. Well, I don't think there would.

Q. If they were grazing of course they would be liable to go in any direction?

A. Yes sir.

Q. But if they were leaving that range on account of hunger, and were going away from there somewhere else, would they have a tendency to follow that road?

A. They might follow that road quicker than anything else, I don't know which way they might stray out from there.

Q. As a matter of fact, Mr. Cookman, Mr. Light's cattle do range, and have in years past ranged over that Crown country, haven't they?

A. Yes sir.

243 Q. And it is possible for them to go even further west than the Crown country?

A. Yes sir.

Q. How far is the center of the Crown country from Mr. Light's ranch, would you estimate?

A. About nine miles I believe, as nearly as I can count.

Q. Where is Hay Park?

A. Hay Park is southwest, I believe, a little of Light's.

Q. Does East Sopris Creek run through Hay Park?

A. East Sopris?

Q. Yes, is that the head-quarters, East Sopris?

A. No sir.

Q. Does East Sopris run south or north of the Hay Park?

A. Runs north.

Q. So Hay Park is——

A. Oh it is east of the creek—of Hay Park, Sopris Creek is east of the Hay Park.

Q. You wouldn't know what section?

A. No, I wouldn't know what section.

Q. What is the principal feed on the lower ranges that we have been speaking of?

A. Why this blue grass and——

Q. Do you mean blue-stem?

A. Yes, sir, blue-stem. When I say "blue-grass",—it is principally I think blue-stem through that country; there is quite a bit of green grass in the oak you know, I don't know what you call it that *grown* in there,—good feed you know in the Spring early or late in the Fall,—cattle don't eat as much through the summer; I don't know what kind of grass they do call it.

Q. Do you recall bunch grass above the beaver dam on

244 East Sopris Creek about a mile below Mr. Light's ranch?

A. Bunch grass?

Q. Yes.

A. Yes, there is a little bunch grass through there, yes, on them hillsides.

Q. And this blue-stem makes good feed, doesn't it?

A. Yes, fine feed.

Q. And that is fine feed during the entire year, is it not?

A. Yes sir, when it is not eaten up.

Q. Is it better when it is green or when it gets ripe and cured up on the ground in the fall?

A. Well of course now my opinion is about blue-stem when it is dry that it is better feed then than any other time.

Q. And when do the cattle put on the fat?

A. In the fall.

Q. And when the blue-stem has been cured?

A. Yes sir.

Q. And have you heard any expression of simple opinion by the cattle men in your country about when it is the best feed? What do other cattle men say about blue-stem?

A. It is claimed to be the best feed we have, blue-stem is.

Q. What time of the year?

A. Any time of the year that we have got, in fact all times in the year.

Q. But is it generally thought that when it is cured, and more or less dried that it is better than when it is green?

A. Yes sir.

Q. That is the general impression among cattle men in your part of the country?

A. Yes it is.

245 Redirect examination.

By Mr. KNAEBEL:

Q. You said the cattle have a natural tendency to stay around the ranches?

A. Yes, some of them do.

Q. Why is it that they don't stay all summer, then?

A. We keep firing them out in the hills.

Q. Is there any other reason?

A. Why we find there isn't the feed there for them, you know, not as good a feed, of course.

Q. You said that cattle could stray and graze profitably—that is the work he used,—the learned counsel—as far as Aspen from Mr. Light's place?

A. Yes sir.

Q. Now please explain what you mean by that?

A. Well, of course now, you say they could go out there, they would have to go on the road for a mile, probably, or a mile and a half to get on the range again. Well of course they could probably stray to Aspen, you see, from there and feed.

Q. Do you know anything about the condition of the grass and water that they would encounter in a trip like that?

A. Well, I wouldn't think it would be a very profitable scheme for a man to start them in that way, but a cow could go on through, and in fact they could go as far as Woody, you know, that is this side from our place.

Q. You mean they could do it and live?

A. Yes, they can do it and come out in fair shape, but
246 there are very few that does do it I think.

Q. There are other people that live in between Mr. Light's and Aspen? Ranchers in there?

A. Yes sir.
Q. They own cattle, do they?
A. Yes sir, they do.
Q. And do they have some use for the range up through there?
A. Yes sir.
Q. And use it pretty well, do they?
A. Yes sir, they do.
Q. So, do you mean to be understood by your answer to the counsel's question that it would be natural, and that cattle in fact would go from Light's and graze and grow fat between there and Aspen?
A. Well, not in any quantities; one might, or two stray off and do it, but I don't think it would be in quantities at all.
Q. In fact have they done it, and do they do it?
A. I don't think they do it now; I have, though, known them to do it from Light's.
Q. How many cattle?
A. Well, maybe we would find two or three there in the Fall.
Q. And that is all you mean by that, isn't it?
A. Yes sir, that is exactly what I mean by it.
Q. And the same way when you spoke of Carbondale and Glenwood?
A. Yes, sir, our cattle goes in there in the Crown country.
Q. Well, how many would go to Glenwood?
A. Never knew one to go to Glenwood,—that far.
247 Q. Or to Carbondale?
A. Well, we would pick up maybe twelve or fifteen head there in the fall late, you know, that would drift down.
Q. How long ago was that, Mr. Cookman?
A. I have done that since I have lived where I am. I used to work for Schloss who lived on West Sopris; we gathered lots of them out of the Crown country then.
Q. What do you mean by the Crown country?
A. It is this side of Carbondale a big country in there probably six miles square, maybe, I don't know.
Q. Is it shown on that map Exhibit 1?
A. I don't think it is; if it is I don't know where it is, the Crown.
Q. How many of Mr. Light's cattle grazed in the Crown country last year if you know?
A. I don't know; I haven't rode the Crown now for five or six years.
Q. When you said that Schloss had six or seven hundred and Tucker five to seven hundred, and Light had two to five hundred, and Zimmerman had some cattle and Chatfield had eight hundred or a thousand over in the Crown country——
A. Yes.
Q. Did you mean they were all grazing in an area six miles square?
A. They wasn't all in the country at all.
Q. *Were* were they?
A. Well sir, they run the Sopris Creek country.
Q. Did they go on what is known as the "forest reserve?"
A. Yes sir.

248 Q. So that your remarks concerning the Crown country were intended to be understood as including the range of the forest reserve?

A. Certainly it is included I said in the forest reserve too, it is not all in the Crown country; they wouldn't run on the Crown,—they have got that whole country from Sopris Creek to Crystal River, they generally run through that country, you know.

Q. And their habits are the same from that range as they are from the range near your place; that is, that they use the lower country first and then drift up on to the reserve; is that correct?

A. That is correct.

Q. Now I don't know whether I understood you, but you in answering yes or no to some questions put to you by counsel then it seems as if you said cattle would not stay in the forest at all if people didn't put salt there. Do you mean to be understood that way?

A. No sir.

Q. What did you mean?

A. That they would stay in the forest better, they stay where salt is better, in the forest or off of it; that is what I say, and that is what I meant when I said it.

Q. You don't mean that if no salt was put in the forest no cattle would go up there at all?

A. No sir, I do not mean that.

Q. It is generally regarded as good practice, isn't it, Mr. Cookman, to use first, as nearly as you can the range that is going to get covered up quick with the snow?

A. Yes sir.

249 Q. And save the range intervening between there and home, and that is going to last longer for use afterwards?

A. Yes sir it is.

Q. Now when you were speaking about salting, and about the cattle not staying in the forest, were you referring to the forest as a whole, or to those portions of the forest that are very high up where the grazing season is short?

A. Yes sir.

Q. Which were you referring to?

A. That is what I was referring to, to the high country where the seasons are short; we put our salt high where cattle will stay high, and we put our cattle low where cattle will stay low.

Recross-examination.

By Mr. WARD:

Q. Why, Mr. Cookman, do some of the cattle men over there refuse to put salt on the range?

A. I don't know I am sure.

Q. You answered counsel for the Government that the same conditions existed in the direction of the Crown country as in the direction of Aspen. Did you understand that to be your answer, that it was fenced up and there is no feed much?

A. Which, the Aspen country, you mean?
Q. Yes.
A. Why yes the cattle are not likely to drift that way.
Q. But you said that the same conditions exist down toward the Crown country as up toward Aspen?
A. Oh no, the Crown country is more open. You must have got wrong.

Q. The country towards Aspen is more fenced than the
250 country westerly?

A. Oh yes, it is more fenced, there isn't any way to get through unless through the lands.
Q. But there is a large amount of unreserved, unfenced land, you say down toward the Crown country?
A. Yes sir.
Q. And good grazing?
A. Yes sir.
Q. Throughout the entire year?
A. Yes there is good grazing in the Crown the entire year, as a general thing.
Q. There would be enough to support two or three hundred head of cattle easily, wouldn't there?
A. Yes, I should think a couple of hundred head of cattle, support them very nicely through that Crown country.
Q. How about those large numbers that used to run there years ago?
A. They didn't all run on the Crown country; I don't want you to think that they run all those cattle on the Crown; they were turned out in that country; they had the range and of course they had it to the top of the hills all north from there.
Q. And that range today, the lower ranges out of the forest reserve are about the same as they used to be?
A. Well I suppose they are; I haven't been over that range, you know, this year or last year either, I don't think.

Mr. WARD: That is all.

WITNESS: If I have misconstrued anything to either one of you I didn't mean to do it; I have been trying to explain it to you as it is.

251 Redirect examination.

By Mr. KNAEBEL:

Q. That Crown country, Mr. Cookman, is also used as a Spring range by a great many people?
A. Yes sir, it is.
Q. And would you say that that was a good, all-the-year-around range?
A. Well not—it is if there isn't too many cattle put on it.
Q. As a matter of fact, taking the conditions as they are, is it good for all the people who use it all the year around?
A. Well, take it with the other country, you know——

Q. No, I am talking about that country alone, not counting any part of the forest reservation?
A. Well, of course you have got to get them out of there.
Q. If you don't get them out what will happen to them?
A. They wouldn't be fit enough to probably fatten, they would get so thin.
Q. Would they stay in there of their own motion?
A. I don't think they would hardly.

Recross-examination.

By Mr. WARD:

Q. As a matter of fact, Mr. Cookman, the most of the cattle during the summer months are up on the forest reserve?
A. Oh, yes sir.
Q. And the Crown country is without cattle practically?
A. Yes sir.
Q. And the country north of Mr. Light's ranch and northwest?
A. Yes it is practically without cattle throughout the sum-
252 mer.
Q. And those that have permits there are trying to get the value of their money from the Government?
A. Yes sir.
Q. And keep them on the forest as long as they can?
A. Yes sir.
Q. And put salt on there, and make all they can?
A. Yes sir, they always have done that.
Q. And so, as a matter of fact, there are less cattle down in the valley lands than there used to be?
A. Yes sir, there is less cattle.

Redirect examination.

By Mr. KNAEBEL:

Q. And those that do not have permits, they try to get all they can out of the Government?
A. Yes, that is probably correct.

N. S. ASHLOCK, a witness called on behalf of the complainant, being duly sworn testified as follows:

Direct examination.

By Mr. KNAEBEL:

Q. Where do you live, Mr. Ashlock?
A. I live in Pitkin County.
Q. What town?
A. Well, I have been living for the last two years in Pitkin County at a little station on the Midland called Meredith.
Q. What is your occupation?
A. Forest ranger.
Q. How long have you been in the service?

A. For the past two years.

Q. Before that what was your business?

A. Working with stock and riding after cattle.

253 Q. How long have you been in that business?

A. Oh, about fifteen or eighteen years, I guess, or better.

Q. Here in Colorado?

A. Yes sir.

Q. In what part of Colorado?

A. In the western slope.

Q. Up in and around this same vicinity where Mr. Light is, or another part of the state?

A. Well, in other counties and in that vicinity.

Q. How long have you been familiar with the Roaring Fork Valley?

A. Oh it is perhaps three years that I have been familiar with it; I have been there on the range before that; I was on the range in the Fall of 1888.

Q. Now you know where Mr. Light's place is, do you?

A. Yes sir.

Q. How many times have you seen that?

A. Well, I could not state the exact time, probably fifteen or twenty times, maybe more.

Q. And have you frequently been over the forest reserve, that portion of it appearing on the map Exhibit 1 there?

A. Yes, I have been over that on several occasions.

Q. Did you ever make an examination of the condition of the range and country which lies adjacent to Mr. Light's, and accessible to his cattle when he turns them loose?

A. Yes sir, I have.

Q. And the condition of the country intervening between the patented lands running from Mr. Light's place southerly and the forest reserve, between the patented lands which run from Mr. Light's place southerly and the forest reserve?

A. Yes sir.

254 Q. What is the character and value of the range which would be accessible to cattle if turned loose from Mr. Light's place on the northeast; stating first what it would be in the spring of the year, and what if any changes would occur to it during the progress of the season?

A. Why my experience with such a range as that has been that that range is lower down and faces to the south, giving a southern exposure, and it is a great deal earlier range in the early spring than any other parts of the range, and that the grasses come earlier there; for that reason people turn out on such range as that early in the spring, and that would cause the range to be over-grazed earlier than any other part of the range; besides that grass starting earlier, along later it dries up and gets tough, and the ranges opened up earlier further, higher, are young and tender and the cattle naturally follow the grasses and the snow line as the snow goes off,—follow the range and this range after or during the middle of the summer is dry. There is no dampness for watering places there where the

cattle can water without going to those creeks, and when they lead down to the creeks for water it is natural for them to go to where they can get tender grasses and follow the trails to the ranges.

Q. And what then would be the result, so far as the ranging of the cattle was concerned, if the herded cattle were turned out
255 at the opening of the spring season on the range right northeast of Mr. Light's ranch?

A. Cattle turned out on a range like there is northeast of Mr. Light's ranch early in the spring, and grazed there for, say, three weeks or a month, it would be worthless after that time through the balance of the summer without there were unusually heavy rains, or something to replenish the grasses.

Q. And where would the cattle go?

A. The cattle would drift to higher range where the grasses were tender and better range, on to the forest.

Q. What makes you say that they would go on the forest. Are you familiar with the topography in this region?

A. Yes sir.

Q. And the trails?

A. Yes sir.

Q. Well, now, then, state why they would go on the forest in your opinion?

A. Well, there is different reasons; one reason is that the water is more plentiful; another reason is that the grasses are tender and in better grasses at the season of the year that I mention,—latter part of June; and there is other reasons that there is not, as a usual thing, salt put out low down anywhere on these lower ranges; salt is put on the upper ranges, and cattle that is running with cattle that is used on the ranches these cattle in this district, as in others, has used on the forest reserve for years past, and even though it was strange cattle that was turned in they would go with the cattle that
256 was located and raised there and drift on to the forest.

Mr. WARD: We ask to have this portion of the statement stricken, because the witness has not shown what cattle have been on this range, whether they are new cattle or whether they were born there.

Q. You say you have known this country for three years, and before that; isn't that true?

A. Yes sir.

Q. Do you know what the habits of Mr. Light and his neighbors have been in regard to the time for turning out the cattle?

A. Why in regard to turning out their cattle, the neighbors and Mr. Light also turns out as early as they possibly can.

Q. It is your business to keep track of cattle there, and has been, as a forest ranger?

A. Yes sir, it is my business; not in that particular district as much as it is in some others.

Q. Have you paid attention during the last three years to the custom and practice in this district?

A. Well, yes, to quite an extent I have; I have been interested

in all the districts, yes, sir, and as to the cattle I know that there is cattle there that has been there for several years, that has been grazed on the forest.

Q. Do you recollect any cattle that were owned by Mr. Light in 1906?

A. Why they was running under his brand and was claimed by him.

Q. The Box L. brand?

A. Box L. brand.

Q. Are there any of those cattle there this year?

257 A. There is a part of the Box L. brand cattle, yes sir, there, but they also carry a brand of "JW"; I understood that the Williams Brothers owns these cattle at this time.

Q. Can you state whether, without going into particulars, there were other cattle this year on that range which had been there for years previous?

A. Yes sir, there is also J. W. brand belonging to Mr. John White that has been there for several years; his cattle run on there.

Q. Are there others?

A. Yes there is.

Q. You need not state the particulars; I just want to know generally whether there were cattle there this year that had been there for a number of years previously?

A. There is Mr. Cookman and Mr. Findley..

Q. Now, then, you will go on and state if you will what the ranchmen there do with their cattle in the early spring, and what course those cattle take in their ranging from the time that they begin to graze near the ranges in the spring through the grazing season?

A. Well, the cattle are of course turned out on these lower ranges and there is two places on this range where they can get water handy. There is one toward Capital Creek, or east; there is no grazing on that particular slope there with water to speak of; in fact it is poorer than it is on the slope toward Mr. Light's place.

Q. What is the consequence of that in regard to the place

258 that they go to water and the direction in which they drift?

A. They would not drift that way, in my estimation.

Q. And in your experience?

A. In my experience; for the reason that there is no feed in that direction; cattle will water where there is feed as close as possible.

Q. So where would they go?

A. I would say that the cattle would drift towards Sopris Creek for water.

Q. Now is there any evidence on the ground that they have done so?

A. There is some evidence, yes sir.

Q. What is it?

A. There is a road leading down along Mr. Light's fence towards Sopris Creek, and from that road there is trails leading to the creek.

Q. Is there any continuation of those trails?

A. Yes sir, they continue on across the creek, and there is two or

three very plain trails leading from the East Sopris Creek into the forest reserve.

Q. How close do they pass to Mr. Light's place?

A. Well, one trail commences quite close to the north end of Mr. Light's fence—I suppose it is a pasture fence, it is adjoining his agricultural land and runs in a western direction to the corner of his fence and then turns southwest. This trail is a very plain trail; any one could follow the trail.

Q. You will state all about that trail, now, and what lies on each side of it, and what there is, if anything, which would give
259 the cattle a tendency to stay on the trail, or to stray from it.

A. This trail runs—it runs after turning the west corner of Mr. Light's fence it follows the line of the fence south to where his fence intersects Findley's, then it would bear, I would judge, as near as my recollection is, to the southwest, or in a southwesterly direction and runs along these fences for a distance of—not of course right along the fence, it runs quarteringly on the hill up the mountain to a wagon road that comes across in above through the ranches, I think it is Dougherty's place, if I remember right, or an Old Thompson; it runs through what is called an "Old Thompson Desert." This road leads on to the forest reserve in Hay Parks. The cattle going up this trail is compelled to lead off to the west and south, from the cause that the east side of the trail is fenced very near all the way up the East Sopris Creek. After leaving the fenced portion of the creek there is a cañon that is practically impassable for a distance of three quarters to a mile that the cattle would not get down to the creek for water; then this would lead the cattle to within a quarter to half a mile of the forest reserve line, in that direction, should they follow this course; but it not being a direct court- it is not likely that they would follow it, that they would drift on to the forest before they got that distance.

Q. How; in what direction?

A. In a westerly direction.

Q. Then is it true that the way to the forest is open to
260 cattle which have taken that trail?

A. Yes sir.

Q. And what of other ways?

A. Well, as I said before, there is another trail starting off——

Q. Wait a minute, you didn't understand. You stated that the direction toward the forest was open to them after they had gotten some distance on that trail?

A. Yes sir.

Q. And what about other directions?

A. Well, there is no other direction that they could go without going on the forest.

Q. Now tell about the other trails.

A. There is another trail leading from the lower end of Mr. Light's—well it is the north end of Mr. Light's ranch; it leads in a northwesterly direction. In crossing the creek on these trails at the north end of Mr. Light's ranch there is an abrupt ridge that goes

down immediately at the lower end of Mr. Light's ranch, *at the lower end of Mr. Light's ranch,* that is the north end of his ranch, of course water runs down hill there at Sopris Creek, it runs north and northwest there, and the trail that I have just mentioned leads out around, swings back around the corner of his fence and runs up East Sopris Creek.

Q. That is the one you have described?

A. That is the one I have described, and this other fence——

Q. That other what?

A. This other trail starts in a northwestern direction, and for a short distance it parallels the creek.

Q. What creek?

A. East Sopris Creek; then it gradually works to the west
261 until it reaches the forest reserve, and enters the forest reserve at the line where the forest reserve starts to run east and west, on the west of Mr. Light's ranch; the line runs west.

Q. Are there any topographic features which would tend to direct cattle into the reserve along the line of that trail, or to deflect them away from the reserve?

A. There is an abrupt ridge, as I spoke of, coming down close to the north corner of Mr. Light's fence.

Q. Do you speak of the north, or northwest corner?

A. Northwest corner. This would have a tendency to throw the cattle up on Sopris Creek in that way, because it is more practical for cattle to travel on a gradual grade, of course.

Q. Then you mean that would have a tendency to cause them to go around the northwest corner and take the trail you first described is that true; is that what you mean?

A. Yes, in going up East Sopris Creek; and, on the other hand, going into the reserve from the other direction that I spoke of after leaving the creek and following the hill on a gradual grade up for a considerable distance they cross over a small ridge into a draw; this draw leads directly toward the corner of the forest reserve there, as I spoke of, where it makes the turn from running north to west.

262 Q. Is there any water flowing in that draw?

A. There was none at any time that I visited it.

Q. But they reach water, do they, as they go up into the reserve?

A. There is water within a quarter of a mile after they enter the reserve line.

Q. And grazing?

A. Yes sir.

Q. Is that good or bad?

A. The grazing at the last time I was over that particular part was in rather poor condition, but farther up the mountain side was better all the way through.

Q. Do they have water all the way up?

A. Yes sir.

Q. How long does the open range,—I mean the range that is composed of vacant public lands accessible from Mr. Light's ranch,

remain sufficiently good to support any considerable number of cattle?

A. Well, I don't think that that range would be of any value to a stockman after the middle or last of June.

Q. That is, considering the conditions that exist there?

A. Yes sir.

Q. As to its use, and its altitude and the exposure to the sun, etc.?

A. Yes sir.

Q. I show you the photograph marked "Exhibit B" which has been referred to by defendant's counsel in connection with some testimony concerning the road which is depicted on it. Have you seen that road?

Q. Yes sir, I think I have seen that road.

Q. Where does it run?

A. It is a road running, as nearly as I can locate it, from
263 Mr. Light's ranch down toward the town of Emma.

Q. And where is Emma located?

A. Emma is located, it is possibly five miles northwest of Mr. Light's ranch on the Denver and Rio Grande Railroad.

Q. Do you know how that road was made, or what is was used for?

A. Why this road here, if I remember right, is a road running from Emma across through this Snowmass in Capital Creek country, and has now become a county road.

Q. What is that trail that appears on the other side of the gulch in that photograph?

A. The picture I think is misleading on account that it don't show this part of the topography here definite enough.

Q. Have you ever found any of Mr. Light's cattle upon the forest reserve?

A. Yes sir.

Q. Now just give *is* the particulars, dates, numbers, etc.

A. Well, I have seen some of Mr. Light's cattle on the forest reserve on August 28, 1907.

Q. How many?

A. I rode over the range and counted twenty-three head of stock cattle, that is, steers, cows and mixed, and counted one bull and eleven head of Light's horses of the Box L. brand.

Q. What was the condition of the lower range off of the reserve at that time?

A. The condition of the range was very poor.

264 Q. Did you see any cattle down there?

A. I seen some cattle,—not on the lower range, they were in a lane on the county road; they were not on what you could term the lower range.

Q. Did you make an examination to see whether stock were in quantities below the forest?

A. Yes sir. They were not in quantities below the forest.

Q. Did you see any of Light's cattle out of the forest near his place, or elsewhere?

A. I see one or two of Light's cattle below the forest; I know

it was just an instance that they got there, I guess, because they were over the ridge from East Sopris on the slope of the Capital Creek.

Q. What kind of cattle,—steers or cows?

A. Well, one that I remember was a cow; the other I disremember just what it was.

Q. Was there any water at that time of the year between Mr. Light's place and the forest reserve?

A. There was water in East Sopris Creek.

Q. I mean accessible to cattle turned out on the vacant range there?

A. I did not see but one place where there was any signs of water; this was a seep-spring on the mountain.

Q. Where?

A. Well, it is west of Findley's—west and south of Fin-ley's place.

Q. Was there any considerable quantity of water?

A. No sir.

Q. Available for how many cattle was it?

A. Well, if the cattle took all day for it, it might water fifteen or twenty-five head.

265 Q. And in respect of the public domain intervening between Mr. Light's place and the forest, how many head of cattle would that have supported, in your judgment at that time?

A. Between Light's place and the forest?

A. Yes, and south and southwest between Mr. Light's place on the east and the forest on the west, and also between the fences on the east and the forest on the west in the open strip?

A. Well, in my judgment, if they were herded there and taken to water, and nothing else was allowed in there they could run a hundred head in there.

Q. If they kept them there?

A. Yes sir.

Q. You are referring now to all the year around?

A. No, not all the year around; it would only be during the summer season; there is about three to five months there that they can't range, anyway, they have got to feed, the snow is too deep.

Q. When I say "year" I mean the grazing season.

A. Well, the grazing season.

Q. Did you ever find Mr. Light's cattle on the forest at any other time?

A. Yes, sir, I visited that range in May 1908, also in October 1907, and see cattle on the range in October 1907, on the forest reserve, of Mr. Light's brand.

Q. About how many?

A. Why at that time I was looking over some different fence propositions and I didn't take particular notice. I think I noted down ten head,—ten or eleven head.

Q. Scattered around in there?

A. Yes sir.

266 Q. Were you there in September of this year?

A. Yes sir, I was there in May this year, and in September.

Q. How many did you count in May?
A. In May I counted——
Mr. WARD: What date?
The WITNESS: The 7th day of May.
Q. Any other day in May?
A. I see that range on the 6th day of May.
Q. How many did you count during those days?
A. There was three head at that time that had entered the forest.
Q. That was very early, wasn't it, for the entering of the forest?
A. Very early.
Q. How were they branded?
A. With the "U Slash UU".
Q. How far up in the forest?
A. Not to exceed a quarter of a mile.
Q. Did you make any examination of the condition of the defendant's fences on this occasion in May?
A. Yes sir.
Q. You may state what you saw?
A. Well, I rode the line of fences completely covering the north section of Mr. Light's ranch on the west, north and east side; on coming to the fences I came from the forest boundary line down to the fence; I followed a trail down to Mr. Light's,—I would call it a pasture fence on the west side of his meadow and house where I came to a gap in the fence, there seemed to be a wire gate which was open.
Q. How wide was the gap?
A. Well, it was just a panel fence; they make these wire gates,—they simply cut the wire at one end close to the post and tie to pole,—tie the wire on the pole instead of the post and then loop
267 a wire from that for a gate which make it very convenient.
Q. Had that gate been thrown aside?
A. Yes sir.
Q. Were there any other openings in that fence?
A. From that I traveled south on the line of fence to quite a deep draw that runs down into Mr. Light's pasture there a distance, I could not say just how far—probably four or five hundred feed maybe, more or less there was another opening in this draw, a gap, which was open.
Q. In the fence, you mean?
A. Yes sir, in the fence.
Q. Did you see any other openings in this fence?
A. From there I traveled on south to where Light's fence intersects Finley's; there was a kind of a combination pole and wire gate, or bars—we commonly term it bars here—and these bars were down and the fence was open at this gap.
Q. Did you see any cattle at those places?
A. Well, there was cattle inside of Mr. Light's field ranch, and at that trip I think that was on the afternoon of the 6th, if I remember right—no it was on the 9th—if I remember rightly there was a bunch of cattle coming and going out through the bars, there was.
Q. Are you sure of that?

A. Yes sir.
Q. What brand?
A. Well, I wouldn't say in particular as to brands outside of Light's brands; I don't remember of taking any notes on
268 it; I do remember that I notices some of Mr. Light's brands there.
Q. And as to the other cattle you don't know what the brand was?
A. No, I wouldn't say; I think there was some of Finley's cattle there,—a few head.
Q. What was the condition of the ground at the places where these openings were into Light's place?
A. Well, the trail was worn very wide; it was almost as wide as a wagon road is, the width of the wagon wheels; the trail was used, had been used to a great extent.
Q. By what?
A. By stock—cattle.
Q. Did you find any of Mr. Light's cattle upon the reservation at any subsequent time?
A. Why none other, I didn't take any particular notice than the times I have already mentioned—on the forest reserve you mean.
Q. Did you make a trip in September of this year?
A. Yes sir.
Q. Where did you go then?
A. I made an examination of the range and the number of stock that is the number of stock that I seen on the forest, of Light's. I started and rode over the range on the east side of Mr. Light's ranch, east and north; rode through on the west side of Mr. Light's ranch into the forest, followed through the forest and in above Hay Parks, what is termed Hay Parks, and over on to West Sopris down a short distance on to the slope of East Sopris or about on the
269 divide in Hay Parks.
Q. Did you find any of Mr. Light's cattle on the Government land in the reserve?
A. Yes sir.
Q. How many?
A. I seen six head of "Lazy T V" brand.
Q. Was that the trip when you started out with Mr. French?
A. I started out with Mr. Burdick from Cookman's place—made the ride on the east.
Q. I am talking now about whom you were with. You didn't count any of the cattle that Mr. French counted?
A. No, sir.
Q. Is that true? Or McLaren?
A. Not of the six head I have mentioned; there was a head of cattle that I think Mr. French counted two more that was of the "U slash U" brand.
Q. Did you stay with Mr. French, or separate from him?
A. Separated from Mr. French and went over this range that I spoke of until I come to Hay Parks; there I met Mr. French and

Mr. Burdick, no—I didn't meet Mr. Burdick but from the Hay Park I and Mr. French traveled together.

Q. Did you find those six head while you were in company with Mr. French or while you were separated from him?

A. While I was separated from him.

Q. Did you find any of Mr. Light's cattle outside of the forest?

A. Yes, sir.

Q. How many, and how near the forest line?

A. I think it was—well there was something like—I disremember, I can——

270 Q. I don't care about the mathematical number; just give the approximate numbers, Mr. Ashlock.

A. Twenty-six head.

Q. How near to the forest line was it, approximately?

A. They were some of them within—well I saw some of them in company as far south—within two hundred feet of the forest line.

Q. Any of them near the trail you spoke of running up by the fences?

A. Yes, out where the trail swings under the hill that I spoke of, going into the corner of the reserve.

Q. From the north?

A. Yes, from the north.

Q. In your judgment, what is the fact as to whether the portion of the forest shown on exhibit 1 here is, or is not overgrazed?

A. Well, the lower part of the forest is overgrazed until you get above the line of what is termed the "Hay Parks" from there on the grass gets some better near the upper regions.

Q. What would be the effect of continued over-grazing of that region upon the grazing, upon the soil of the forest?

A. Why the grasses would all be killed out and the ground would dry up, there would be no moisture, timber would naturally die for want of moisture if there was no protection, if the ground was tramped up there would be nothing to hold moisture in the ground, and it would be washed away and be valueless.

Q. What would be the effect upon the possibility of reforestration in that region?

271 A. Well, if those conditions were allowed to exist there would be no possible way of reforesting that place because there would be no fertility to the soil.

Q. Have you ever heard Mr. Light make any declaration as to his intention in regard to taking out permits for cattle on the Government reservation.

A. Yes, sir, I have.

Q. State the occasion briefly, and what he said.

A. At a stockmen's meeting and convention at Basalt on February the 23rd, I think, 1907, Mr. Light got up and made a speech before a crowd of oh, possibly sixty or seventy of the farmers and stockmen in that district and declared that he would not take out a permit, and that he didn't want any of the others of his neighbors to take out a permit: he says, 'We won't any of us take out a permit, we will all go to jail together;" he says, "I don't want any of you

to take out a permit." He made quite a lengthy speech, probably twenty minutes or more.

Q. Was that the meeting at which the written agreement was drawn up and signed.

A. Yes, sir.

Q. Did you see that?

A. I did not see the written agreement but I knew of it, I was there and I saw them have it, and saw the people signing it.

Q. Did you hear Mr. Light make any statements about it?

A. Why, he asked everyone to sign this agreement.

Q. Did he state what the agreement was?

A. The agreement was a resolution that they would not
272 make application nor pay the grazing fee.

Q. Is that what he said it was?

A. Yes, sir.

Q. Have you heard him state on any other occasion anything in regard to his attitude on this subject?

A. No, I have never had any conversation with Mr. Light on the subject further than that.

Q. Do you know what, if any, effect has the attitude taken by Mr. Light in this regard had upon the difficulties of administering this reserve, in your experience?

A. Why the people object to us moving their cattle around for the reason that they say that if we move their cattle up on the mountain and Mr. Light don't pay his grazing fee, we haven't got any control over him, we can not move his cattle, and that they don't want to move their cattle up there when we can not control his, for the reason that he gets the benefit of the lower range, and they get only a short season of the upper range in the summer time, and this lower forest range is eaten off during the summer while they are above, by Light's cattle, and they say it ain't fair that they should pay a grazing fee and not get those benefits where Mr. Light grazes without paying the fee and gets the benefit.

Q. And what effect, if any, does that have upon the feasibility of equalizing the grazing on the entire forest area there?

A. It has a great deal of effect; when the people all take
273 out the permits they are all under our jurisdiction, and we can allot the ranges; if we find that the range is over-grazed we can decrease the number on this range and change it to some other part of the district where the grasses are sufficient; therefore, we can protect this particular range that is being over-grazed. If Mr. Light had a permit there and was paying a grazing fee we could require him to put his cattle where we wanted him, to protect that range. As it is we can not.

Q. As it is do you or do you not find it feasible to require others?

A. Sir.

Q. I say as conditions are, do you or do you not find it easy or feasible to require those who take out permits to move their cattle.

A. They object to moving their cattle, when Mr. Light runs them where he pleases.

Q. Do you know this Crown country that has been talked about, which was mentioned in the examination of Mr. Cookman?

A. I am not thoroughly familiar with the Crown country, no, but know it to some extent.

Q. Well, state what the conditions are, if you know, in that Crown country with respect to the grazing throughout this grazing season?

Mr. WARD: We object to the question and the answer, because he said he is not familiar with it.

274 Q. Go on.

A. It is a range that is handled under the same conditions as this range was to the north of Light's range; it is a low range without any supply of water besides these streams that run around the foot of it; you take Roaring Fork, there is no cattle goes down Roaring Fork to water there; the steepness of the slope prevents them from watering from the Roaring Fork or the fences and the same condition exists to some extent on the Crystal river side.

Q. And how long is the range good there in the spring, if you know?

A. Well, I am not posted as to the length of time the range is good there; it is owing to the conditions of the weather, whether it is raining or not, but I would judge it would dry up and be in the same condition as the other ranges similar to it, as soon as other ranges do.

Q. Have you ridden over that range?

A. Yes, sir.

Q. Have you herded cattle on it?

A. No, sir.

Q. Have you been over it enough to feel that you can form a conclusion, satisfactory conclusion, in respect to it?

A. In respect to it—in what way?

Q. As to its similarity to the range around Mr. Light's place?

A. Yes, sir, I think I can. There is very many districts in that country that is situated the same that I have been on; there are several other places that the same conditions exist.

275 Mr. WARD: Defendant asks that this last testimony in reference to the ground be stricken out as being based upon comparison, and not upon the personal knowledge of the witness.

(Adjourned until the hour of one o'clock P. M.)

ONE O'CLOCK P. M.

Solicitors Present:

Ernest Knaebel, Esq., on behalf of complainant.
Ethelbert Ward, Esq., on behalf of defendant.

Cross-examination of N. S. ASHLOCK.

By Mr. WARD:

Q. Mr. Ashlock, you described in your direct-examination two trails leading to near the northern extremity of Mr. Light's ranch

southwesterly into the reserve; the most southerly trail you described first. Where does that trail begin with reference to East Sopris Creek?

A. Why it is at the north line of Mr. Light's fence where Sopris Creek leaves the Light land.

Q. I hand you defendant's Exhibit C and ask you whether you recognize that portion of the territory, and if you can indicate there where this trail begins, if it appears?

A. Yes sir, I think it is very plainly shown on this picture where one of the trails begins,—the trail running southwest.

Q. The trail running southwest?

A. Yes sir.

Q. That is the most southerly trail?

A. Most southerly trail.

Q. Does that picture show where the trail that runs over to the west begins, or do they both begin about the same place?

276 A. No, I would think that the trail that runs northwesterly from the start there would be just a little down the stream from there.

Q. Can you see any trails on that photograph that would indicate running down the creek in a northwesterly direction?

A. Why, all of the trails starting out from the creek at the end of that fence run in a north—almost a northwesterly direction from that to a westerly direction.

Q. And then it turns?

A. Then it turns south.

Q. I hand you Exhibit B., and if it should appear by the testimony later that that was taken in the vicinity of the same photograph C. looking northwesterly up Sopris Creek,—can you see any signs of a trail in the sage-brush on the right side of the road?

A. On the right side of the road?

Q. Yes, going down, on the eastern side of the road, which is the right of the photograph, are there not some trails that are not very clearly defined on that photograph?

A. Well, the country is so open and so barren there at that point——

Q. That you can not tell from the photograph, then?

A. (Witness continuing:) —that most any place might look like a trail on that hillside.

Q. Now you say the most southerly trail that you have first described begins approximately as shown on this photograph?

A. Most southerly trail?

277 Q. Yes, on this one here that runs,—slopes to the ranges—begins approximately there?

A. Yes.

Q. Now just describe, Mr. Ashlock, the way the trail runs in a southwesterly direction again.

A. The trail begins at the north line of Mr. Light's fence and runs in a westerly direction to the corner of the northwest corner of what I would term his pasture fence there, and then it turns south and runs on a line almost parallel; of course it varies a distance from

the fence a little until it reaches Mr. Findley's the corner where Mr. Light's fence intersects Findley's fence.

Q. That point is the location of the photograph Exhibit 3 of complainant?

A. Yes sir.

Q. Now how does the trail run going to the southwest from there, Mr. Ashlock?

A. Well, the trail runs along in the direction of Mr. Findley's fence which in my judgment is neither north nor south nor east nor west in that locality.

Q. It rather follows the trend of the creek, doesn't it?

A. Yes sir.

Q. And most of the fences on the ranches above Mr. Light's home more or less follow the trend of the creek?

A. Yes, for a ways up there they do.

Q. And how far up do those fences run; can you tell by reference to this map, or by your recollection how far beyond the Findley corner just spoken of?

A. Why it is something like half a mile to the first draw I think that this trail runs to; I wouldn't say that it was a half a mile, but it is something like that.

278 Q. I was speaking of the fences.

A. Yes sir, and the fences also. You are not speaking of the trail?

Q. No, I am asking about the fences that cut off, fence these ranches along East Sopris Creek above Mr. Light's. There are several ranches above Light's aren't there?

A. Yes sir.

Q. And they are all more or less fenced in?

A. Yes, more or less fenced in.

Q. And the westerly fence of these ranches follows more or less the trend of East Sopris Creek?

A. Yes sir, the trend of East Sopris Creek.

Q. Now those fences run to within what distance of the forest reserve before they stop, would you estimate?

A. Why I would say the distance wasn't over approximately a mile and a half.

Q. Now the trail that you speak of, after leaving the Findley corner, follows in a general direction along the line of those fences?

A. I say that the trail follows along the general line of Findley's fence until it gets to the first draw, approximately half a mile south of the corner where those bars is.

Q. Yes.

A. Then there is a pretty well defined road and trail leading from there on to the forest.

Q. Across the hill, or in the direction of these fences?

A. Why across the hill.

Q. You spoke awhile ago of a cañon?

A. Yes sir.

279 Q. Up at the head of East Sopris Creek I think you said this trail went up about to the Old Thompson Desert; is that correct?

A. I don't know whether it is a desert or a homestead, but it is known as the "Thompson ranch."

Q. It is known as the Thompson ranch. That is the ranch that is higher up East Sopris Creek; is that true?

A. I don't know, I believe these fences run as high as any other one on that side of the creek.

Q. Now does that trail come up anywhere near that ranch?

A. It has to bear towards the forest line on account of the fences.

Q. When it gets there?

A. Before it gets there, in order to get around the fences, for that fence runs up on the hill to some extent.

Q. And just above the Thompson ranch I understand you to say there is something like a cañon?

A. Yes sir, there is something like a cañon up there above the—I wouldn't be sure,—it starts in, the cañon starts in or about along the Thompson place.

Q. And just before this trail reaches the cañon part it branches out more westerly towards the reserve?

A. No, there is a road that leads through the Thompson place going out on to the hills from the forest on to the forest reserve.

Q. And does the trail join that road?

A. The trail—I think it joins the other road that I spoke of first.

Q. Where does that road run?

A. That leads to the top of the ridge up into the forest.

280 Q. So then, the trail that you first spoke of, that southerly trail, branches off before it gets anywhere near the Shuttleworth and Robinson ranch; or do you remember?

A. I think there is a trail—there is a trail still on up around those fences toward the——

Q. As a matter of fact, Mr. Ashlock, you find more or less trails on the outside of most fences on the western slope, don't you, fences that have been there any length of time?

A. Yes, where stock travels on the range there is trails outside of the fences.

Q. Isn't there a tendency for cattle in the fall to go down to the ranches where they are fed, and walk up and down the fences waiting to get in?

A. They do to some extent.

Q. Now, Mr. Ashlock, you have noticed trails on other parts of the range than right in there, haven't you?

A. Why there is now and then of course trails on the hillsides, yes sir.

Q. There are trails, as a matter of fact, running in most directions over those hillsides in that neighborhood, aren't there?

A. I don't remember of but one defined trail, what I would call a trail; of course this trail runs along somewheres near the boundary of the forest and enters into the forest more to the northwest corner there,—north and west corner.

Q. And you are tracing, if possible, some trails that would lead from Mr. Light's northwest corner into the forest?

A. Sir?

Q. You were trying to find, if possible, some trails that lead from Mr. Light's northwest corner into the forest?

A. No sir.

281 Q. You were not looking for trails then?

A. No sir.

Q. That kind of trails?

A. No sir.

Q. You were not looking for trails that ran in any other direction either, were you?

A. Why not in particular.

Q. But is it not a fact from your experience in the western country that there are a large number of trails that lead from the hills down to water in almost every part of the country?

A. Oh yes, there is trails leading to and from water.

Q. And also cross-trails in almost every range you have ever been over?

A. Yes, there is cross-trails.

Q. Now you spoke of having made an examination of the west fence of Mr. Light, north of Finley's corner?

A. Yes sir.

Q. And you saw two open places in that west fence, and also open bars on that day?

A. Yes sir.

Q. That was the 6th or 7th of May, was it not,—1908?

A. Yes sir.

Q. At that time Mr. Ashlock what was the condition of the grazing upon the Holy Cross forest reserve near Mr. Light's ranch?

A. At that time the range had not opened up on the higher part of the reserve.

Q. Would there have been much danger of cattle going upon the range at that time and eating the range, to the detriment of the tres on the range?

A. I think not as high up as the timber-line of the spruce and pine bushes.

Q. But they might have gone upon the lower portions of

282 the range where there are no trees,—the forest reserve where there are no trees?

A. I have seen cattle on the lower portion of the range.

Q. You did see on one of those dates three head, didn't you, on the lower portion of the range; did I understand you right?

A. Yes sir.

Q. But that was where there were some trees?

A. It was in the quaking asp.

Q. Mr. Ashlock, did you examine to see whether or not there was another fence somewhat east of the west fence that you spoke about seeing gaps in, inside of Mr. Light's farm?

A. I did notice a fence, yes.

Q. Did you notice how that fence ran?

A. It run almost parallel with the outside fence, as near as my recollection goes.

Q. Did you make any examination of that fence to see whether or not there were any gaps in it, or the gates were open that day?
A. I did not.
Q. Did you see any gaps or open gates in that fence that day?
A. I don't remember of seeing any.
Q. Did you notice to the east of the second fence of which we have just spoken, over on the meadows,—you noticed a lot of cattle there that day, did you?
A. There was cattle in both enclosures.
Q. Where were most of the cattle to the east, or to the inside fence, or to the west of the inside fence?

283 A. Since recalling that now I think that the principal part of the cattle were in Mr. Light's meadow.

Q. Did you notice that day whether or not the gate on the northeasterly side of the meadow lot near the road was open?
A. On the northeasterly?
Q. Northeastern side of the meadow pasture diagonally across the creek from you?
A. There was no gap open on that side that day.
Q. You didn't notice any gate open?
A. No sir.
Q. Did you notice a gate up there, that is wire, what they call a wire gate,—just a wire gate?
A. I did not.
Q. Do you recall quite a severe storm that had occurred somewhere along the 3rd or 4th of May, in that country, with a fall of snow?

Mr. KNAEBEL: That is objected to as extending the cross-examination unduly beyond the limits of the direct.

Q. You don't recall that?
A. I don't recall that.
Q. You spoke of seeing some cattle to the west of Mr. Light's ranch and near the bars that were open, and said that they were Mr. Light's cattle. Had those cattle shed at that time?
A. Not altogether I don't think they had.
Q. Did you have any difficulty in reading the brands on them?
A. No I think Mr. Light's brand was quite plain.
Q. Was that the same time that these photographs were taken, exhibits 3 and 2?
A. Yes sir.
Q. Were you there when those photographs were taken?
A. Yes sir.
Q. Are any cattle shown on those photographs?

284 A. I think not; I think that the cattle went away from there before we had taken the photographs; the cattle were right close, standing here, the brush would probably hide them in the picture.

Q. Mr. Ashlock, from your knowledge of ranges and of water, would you say that the range north and northwest of Mr. Light's enclosing the Crown country is poorly watered?

A. I can say that that country is poorly watered with the exceptions of the streams at the foot of the mountains,—foot of the hills.

Q. Well won't streams always make a great exception about water?

A. Yes sir.

Q. Now considering the streams and not excepting the streams, is that territory poorly watered?

A. Not excepting the streams?

Q. Including and considering the streams of water is it poorly watered; that is what I want to know?

A. I consider the range is poorly watered.

Q. There is plenty of water in West Sopris Creek, isn't there?

A. Yes sir.

Q. Never goes dry?

A. Not to my knowledge.

Q. How about East Sopris Creek; in East Sopris are there the same conditions,—plenty of water?

A. The same conditions I think.

Q. Are the banks so precipitous as to prevent cattle from getting water?

A. No sir.

Q. Why would you consider, then, that that territory is poorly watered?

285 A. For the reason that cattle can not be handled profitably for market on a range like that for any purpose, because cattle will not do well where they have got to travel a long distance for water.

Q. What would you consider traveling a long distance for water?

A. Well, anything over a mile and a half.

Q. Is there any portion of that territory more than a mile and a half from water?

A. There is.

Q. What portion?

A. On that Crown mountain.

Q. What distance are some portions of that territory from water?

A. Well, I could not give the exact distance, I would have to approximate the distance.

Q. Approximately.

A. In the way cattle would have to travel, two to two and a half and three miles.

Q. And you consider that it is harmful in cattle grazing for them to travel two and a half to three miles to water?

A. I do, with the condition of the range that they are grazing on, in a locality like that.

Q. What difference would there be as to the distance with this range or any other range?

A. On a good range they could drift from one creek to the other for a distance of two or three miles and feed; they would be putting on flesh in that time.

Q. Is it not a fact, Mr. Ashlock, that cattle stray and drift until

they get thirsty and then they make a straight shoot for water as near as they can?

286 A. Not where water is plenty in the range they don't.

Q. But if it is a badly watered range like this range is, according to your opinion, won't they?

A. They graze and do without water until sometimes they suffer, and they travel very rapidly to water; then they don't leave the water again, and therefore they are not grazing all the time, and that is the reason that cattle look so tough and hard in localities.

Q. And where they do have to travel as much as two miles and a half or three miles they generally travel over the trail, and yet graze, do they?

A. No I don't think they graze where they go out on the range like that, and getting to water.

Q. And that would have a tendency to make a great many trails in this territory on account of the difficulty of getting water?

A. No, I don't think that it would have a tendency to make a great many trails; cattle usually travel for certain water holes in a locality like that that they come to.

Q. But it would have a tendency to make those trails well defined, wouldn't it?

A. Yes sir.

Q. Do you know anything about there being two lakes in the Crown country range?

A. Yes sir.

Q. Are they there?

A. They are; I have seen one of them.

Q. Mr. Ashlock, you spoke about salt, and the difficulty in getting the cattlemen to put salt upon the range. What reasons

287 did they give for that?

A. They said that they didn't feel like they ought to be compelled to put salt out on the range unless we could compel Mr. Light to put out salt.

Q. They made no objection to the fact that they had to put salt away up on a high range?

A. They had no objections to putting salt up on a high range provided the cattle could be put up there and held up there and they would get the use of the lower part of the forest in the fall as the cattle came down.

Q. But you found it practically impossible to hold cattle up there on the high range, didn't you?

A. Not where we put salt, and the cattle is properly located.

Q. Did any one besides Mr. Light refuse to put up salt when told to do so?

A. Not to my knowledge.

Q. So then the objection was verbal, practically?

A. Sir.

Q. The objection was simply talk? They put the salt on the range when you told them to, didn't they?

A. Why I understand from the rangers that they did put salt there, yes.

Q. So that you can not accuse Mr. Light of causing them not to put salt up there, according to your understanding?
A. No sir.
Q. Now do cattle injure a forest in grazing through a forest?
A. Not where it is not grazed too heavily, I don't think, they don't injure it.
Q. Was the Holy Cross reserve in the vicinity of Mr. Light's grazed too heavily in 1908?
A. I think that the Holy Cross forest even before it was
288 the Holy Cross forest was grazed too heavily in that vicinity.
Q. Was the excessive grazing in any manner due to the fact that you permitted too many cattle to graze up there,—that your Forestry Service permitted too many cattle to graze up there?
A. I think not.
Q. To what do you attribute that fact that certain portions of the Holy Cross reserve had been over-grazed?
A. The improper handling of stock.
Q. Who failed to handle the cattle properly?
A. The over-grazing there was caused from the cattle not being handled properly by the users.
Q. In what particular?
A. They objected to taking the cattle up and scattering them, on the ground that Mr. Light had not paid the grazing fee, and that they hadn't ought to be required to herd their cattle when he let his run at large, and eat a range that they should have.
Q. Do the rules of your Service require the owners of permits to herd their cattle upon the forest reserve?
A. If necessary, yes sir.
Q. Did you require any of those cattlemen in that vicinity this year to herd the cattle?
A. They moved the cattle as directed by the ranger.
289 Q. They did move them when directed?
Q. I say they did move their cattle when directed.
Q. Did they this past summer move them when directed?
A. In this particular district I don't know whether they did or not.
Q. Did you ever hear of any complaint saying that they would not handle their cattle according to the directions of the Service?
A. I heard them say they would not pay a grazing fee if Mr. Light didn't.
Q. They did pay the grazing fee, didn't they?
A. Yes sir.
Q. And did put up salt, didn't they?
A. I guess they put up salt.
Q. And they did do what the rangers told them to do in reference to their cattle, didn't they, so far as you know?
A. I think that is the report of the ranger, yes, sir, in that district.
Q. I yet fail to see why any portion of this range was over-grazed. You say it was because people didn't properly handle the cattle. Now will you tell me in what particular they failed to handle the cattle properly so as to overgraze this range?
A. Why in handling the cattle, Mr. Ward, if Mr. Light had had

a permit we could have compelled him, or any of the rest of them, to move their cattle to another part of the forest, or another part of the district, to overcome this overgrazing so that the range would be rested and reseeded.

Q. Well, couldn't you have done the same thing independent of the small bunch of cattle belonging to Mr. Light?

290 A. It could have been done, I expect.

Q. Was it done?

A. I don't think it has been done.

Q. Was any attempt made to do it?

A. In salting I think there has been an attempt made to get the salt up high.

Q. I understood you to say the salt was placed where it ought to be placed?

A. Well, that is my—I have been informed that way.

Q. And what per cent of cattle would naturally go high up on the forest reserve, do you think?

A. What per cent?

Q. Yes.

A. From the lower ranges?

Q. Yes.

A. Well, I would think that it would be four-fifths of them.

Q. Four-fifths of them; but not all at one time?

A. Well, the majority of them go at one time in the spring when they start to go on the range.

Q. When do the cattle go up on the high range in the spring?

A. That is owing to the time spring opens up, and the season.

Q. In 1908 what would you consider was the time in which cattle on that range would of their own accord go up on the high range of the Holy Cross Reserve?

A. Oh, along in the month of June.

Q. Are the flies any ways troublesome during the months of June on the high range?

A. Yes, during the latter part of June, and some in July.

Q. Does that have a tendency to make the cattle leave the high range?

A. The cattle take to the timber to quite an extent during the fly season; fight flies in the timber.

291 Q. In the quaking asp?

A. In the pine and spruce, too.

Q. The object of putting salt on the high range is to toll the cattle up there and keep them up there, isn't it?

A. Yes sir, to use the grazing and eat off the forest to the best advantage.

Q. To keep them there while they otherwise might leave?

A. Yes sir.

Q. When you made the search for Mr. Light's cattle upon the forest range do you think it possible that some of the same cattle might have been counted by the other rangers or supervisors, or assistant supervisors?

A. The particular part that I went over couldn't have been counted

by the other rangers or supervisors, with the exception of Burdick, who accompanied me on that part of it.

Q. And you made quite a careful investigation as you went along, didn't you?

A. Yes sir.

Q. So you didn't probably miss very many of Mr. Light's cattle?

A. I missed a good many cattle that I didn't go to see at all, yes sir.

Q. How do you account for the fact that so few of Mr. Light's cattle were found upon the range at those times?

A. Well, one way I account for it I didn't ride over very much of the territory myself.

Q. That accounts for the fact that you didn't see any more, does it?

A. Why that would account for it in one way, yes, sir.

292 Q. So you don't think, then, that a careful search was made for Mr. Light's cattle on the forest range?

A. I don't know as to what country, what part of the reserve the other men rode on, or how careful a search they made of that part.

Q. But you did make a careful search on your part?

A. What I went over.

Q. And you went over it carefully so as not to make a mistake in the brands?

A. Yes sir.

Redirect examination.

By Mr. KNAEBEL:

Q. It is an easy matter to cover all of that range that is grazed on by Mr. Light's cattle on the forest, in a short time?

A. No, I wouldn't say it is.

Q. You say you made a careful examination. You refer, then to the fact that you carefully examined all of the country feasible from the line of your route the way you rode?

A. Yes sir.

Q. Now would it be easy or would it be hard to cover the entire territory for the purpose of ascertaining the exact number of Mr. Light's cattle that were on the reserve, on any one day or at any one time; and how many men would be required for that purpose on a single day.

A. The way the cattle was running, and scattered at the time I was through there I would think, to make a close investigation, that it would require at least twenty men two or three days to make

293 that examination and get everything that Mr. Light had in there, to be sure that it was.

Q. Is it a rough country up there?

A. Very rough country; the cattle were scattered in small bunches, and into the timber in all directions,—very difficult to get to see all of them.

Q. You spoke of being accompanied by Mr. Burdick?

A. Yes sir.

Q. Was that on all of the occasions that you have testified to, when you found Mr. Light's cattle on the reserve?

A. No, as I stated in the direct-examination I think that Mr. Burdick accompanied me to the Hay Parks.

Q. On which visit?

A. On the visit in September.

Q. 1908?

A. 1908, and then from the Hay Parks I rode with Mr. French on the return trip.

Q. Something was said about there being lakes in this Crown country that Mr. Ward has mentioned. Do you know of a lake there called Dinkle Lake?

A. Yes sir.

Q. Is that accessible to cattle, do you know?

A. The upper portion of it is, yes.

Q. When did you see it last?

A. On the trip I made through there in September.

Q. Did you make an examinaion of it to see whether it was fenced or not?

A. No sir, I did not.

Q. When did you go to it.

A. I went,—well I could not state the exact distance; it is something like half a quarter I suppose from the south end of the lake.

294 Q. Now are there any other lakes in that Crown country that continue to afford water supply for cattle throughout the summer?

A. I couldn't say as to that.

Q. In regard to whether or not patrons of the reserve have refused to salt. You said that you had learned thus and so by report. I would like to know whether that particular district, for the purpose of requiring salting or other measures for the proper distribution of stock has been under your control directly, or under that of some other ranger?

A. Under another ranger.

Q. Who is that?

A. Mr. Burdick. In 1908 it was under the direct supervision of ranger Cyphers.

Mr. KNAEBEL: That is all.

Mr. WARD: That is all, Mr. Ashlock.

FRANK A. POWELL, a witness called on behalf of the complainant, being duly sworn testified as follows:

Direct examination.

By Mr. KNAEBEL:

Q. How old are you, Mr. Powell?

A. Twenty-eight, past.

Q. And what is your occupation?

A. Forest Service.

Q. Ranger?

A. Yes, well I am a guard really.
Q. How long have you been in the Service?
A. Since May 20th.
Q. Of this year?
A. Of this year.
Q. How long have you lived in Colorado?
295 A. Why I have lived here approximately twenty years.
Q. In what place?
A. Well mostly on Snow Mass, Pitkin County.
Q. That is right in the vicinity of Mr. Light's home?
A. Yes. Snowmass and Capital, and then I have been away; I have been to Wyoming and different places around.
Q. Was that your boyhood home up at Snowmass?
A. Yes.
Q. Have you had any experience with the herding of cattle?
A. Why yes, I have done that mostly all my life off and on; of course I have broke horses and punched cows and bought some cattle, and sold cattle, etc.
Q. And have become more or less familiar with cattle habits and with range questions?
A. Yes sir.
Q. Do you know this Crown country that has been spoken of by the counsel for the defendant?
A. Yes sir.
Q. Have you ever been there?
A. Yes sir, well I have been there several times.
Q. During what years, or how long ago?
A. Why I was there this year; I suppose I have been there,—Oh I have been there twenty times, I suppose, this year since May 20th.
Q. And before that had you ever been there?
A. And before that, let's see—about three years ago I was there twice during that summer, and before that I could not say, but I have been there on and off every year.
296 Q. And you have observed the condition of the range there at different times of the year?
A. Yes sir.
Q. You may describe it.
A. Why in my estimation it is a very poor range,—always has been; there never has been any water there to speak of; the only water is down at a ditch running out of Prince Creek; that is way down on the west side of the range, that is the Big Four Ditch.
Q. How far away is that from Mr. Light's place?
A. Mr. Light's, well that is, oh I should say ten miles, approximately; of course I don't know exactly.
Q. What is the character of the herbage,—feed?
A. Well, there is blue-stem there, a little blue-stem, and on the north side there is choke and piñions and sage-brush, and a few quaking asp.
Q. Cattle don't use those things, do they, for feed?
A. No, not very readily they don't unless they starve they sometimes browse on them.

Q. About how much of open range is there over in that Crown country?

A. Well, I never made an estimate of it; I should judge *they* was five or six miles there each way.

Q. And how many cattle do you think that would support throughout the entire year, except the winter?

A. Well, it might support a hundred head if they could be driven on there and kept on there.

Q. Why would it be necessary to drive and keep them there?

A. Because they would never stay, there is no water, the
297 Crown country has less feed and no water unless they go down to West Sopris or Prince Creek.

Q. How far would they have to go?

A. From the top?

Q. Yes.

A. Oh they would have to go three miles and a half.

Q. And what would be the condition of the feed there as the season advances into June and July?

A. It just dries up, there is no feed.

Q. Then where do the cattle go which are put on there?

A. On the forest reserve.

Q. And enter it from the north?

A. Enter it from the north—well no, let's see,—it is the west boundary line.

Q. Now look at Exhibit 1 and state about where this Crown country would lie?

A. The Crown lies in here (indicating on plat).

Q. And beyond?

A. Yes, up this way (indicating on plat,—and referring to note book).

Mr. WARD: We object to the witness referring to his note-book. He has lived there all his life and if he can not tell where it is he ought not to look at his note-book.

Q. Near to what township?

A. Township 9, approximately.

Q. And what range?

A. 86 or 87, I am not positive as to that.

Q. I show you Exhibit 4, in which this indicates the forest reserve, and on which I have marked the letter "L" at the point corresponding with the Light ranch, as shown on Exhibit 1, and ask you to point out, if "L" represents the ranch of Mr. Light,
298 in what direction the Crown country is on Exhibit 4?

A. It would be northwest of Mr. Light's ranch.

Q. And about how far northwest?

A. Why it would be in township 8 south, according to this.

Q. Now, generally speaking, have you been all over the country, the vacant public domain which lies north of the forest reserve on the north boundary of the forest reserve as it appears upon Exhibit No. 1?

A. North of the forest reserve?
Q. Yes.
A. Why I have approximately; of course I couldn't go over all of it, as some of it was too steep.
Q. For about how many miles to the north and northwest of that particular portion of the north line of the forest have you ridden?
A. Why where do you mean, opposite Mr. Light's ranch?
Q. To the north and northwest of the north line of the forest?
—. ——.
Q. (Question read by stenographer).
A. Well, I have ridden over all the country that lays between there and Sopris Peaks and the Crown.
Q. Now do you know approximately how many cattle are turned out there each spring by people living near there?
A. Why you mean on East Sopris, or Prince Creek?
Q. The region I am referring to and that you have referred to as the Crown country.
A. In this country from this side I should say that there was, oh, approximately five hundred head—that is from the Sopris Creek, and then from the Prince Creek side it would be,—
299 well maybe seven or eight hundred head.
Q. Do those cattle go in there each year at the opening of the spring season?
A. Yes sir.
Q. And state if you know where they go for their summer feeding?
A. They go on to the reserve,—the Holy Cross forest reserve.
Q. For what reasons?
A. Because there is no grass outside.
Q. Do you know about the custom and practice of the cattle owners who live near and in the vicinity of Mr. Light's ranch, as to the time of the year when they turn out their stock?
A. Why they turn them out as soon as possible after the snow is off; that is along in—sometimes in April and sometimes in May.
Q. Now it has been testified here that all of those people except Mr. Light have taken out permits. I ask now whether during the last two years to your knowledge it has been the practice of these people to drive their stock upon the reserve when they turn them out, or at any time?
A. Well, you see I just went there the 20th of May this year and most of the cattle was on the reserve at that time; still they was quite a few up and down the Creeks, Prince Creek and East and West Sopris creeks.
Q. What happens to the range around Mr. Light's place on the northeast, northwest and between Light's ranch and the forest?
A. Why in my estimation there never is any range there; there is range there but not any grass there to speak of; in the
300 early spring and in the winter there is sometimes grass there, but I have never seen cattle stay there.
Q. What has been your observation as to what the cattle do?

A. Why they would always drift up on to the higher country.
Q. And when you say "higher" what do you mean?
A. That is, the forest reserve.
Q. Did you see any of Mr. Light's stock on the forest reserve this present year?
A. I did.
Q. State when.
A. On September 6th I rode the range with the assistant supervisor John McLaren, and I saw eight head of "U Slash U" cattle and two head of the "Lazy T Open A" connected, or "Lazy T V" connected, whichever way you call it.
Q. What portion of the reserve were they found upon?
A. They were on the sawmill road; let's see, that is in—may I refer to my note-books?
Q. Did you make a note at the time?
A. Yes, I did.
Q. You may refer to it if it is necessary to refresh your memory.
A. Well, I seen some in the Hay Park country; that is in section—that was approximately in section 10, township 9, range 87.
Q. Where did you see the others?
A. They was on the sawmill road; I can not remember just what that was in.
Q. Were they on the land of the Government within the reserve?
A. Yes, they was a mile inside of the forest reserve, ap-
301 proximately a mile.
Q. Not upon private land?
A. No, not upon private land,—west of the forest reserve; they was in and around the sawmill road.
Q. Have you seen any trails, or do you know of any trails that lead from the vicinity of Mr. Light's place,—cattle trails?
A. Yes sir, I rode over some trails on September 12th below Light's place.
Q. Describe the trail?
A. Well, on the north side of the creek right below his place it has all been stamped down and eaten off where cattle has been running around there, and on the other side, well it is about the same off right along the creek it has all been tramped down where the cattle have been going, passing back and forth up and down the creek.
Q. On what other side?
A. On the south side, southwest side.
Q. Of his ranch?
A. Yes, of East Sopris; and there is at the upper end, or that is, at the upper end of this beaten down place or right below his fence there is a trail leading right out around his fence and going right towards East Sopris, going right to East Sopris.
Q. Where does the trail lead to, if you know?
A. Well, it eventually leads into the forest; it goes up to a creek that runs in the Shuttleworth place and across the creek, and you

can follow that run around the fences until you get up to
302 Thompson Place, and at Thompson Place there is a cañon in there and there is a road that turns up which is an old stock road, that turns up towards Hay Park and on the forest reserve.

Q. Will you state whether there were any evidences that cattle had used that trail?

A. Well, I didn't see no fresh tracks on the trail when I was there, but I have seen cattle on there in former years, former times when I was there.

Q. When you lived there what would the cattle do each spring?

A. They would turn them out there around the ranches and they would always work up on to the forest reserve; that is where the forest reserve is now, I believe, I have been there, too, since it was started.

Cross-examination.

By Mr. WARD:

Q. Mr. Powell, there are nearly always trails around the outside of fences, aren't they?

A. Yes sir, most always.

Q. Now please tell me where the Crown country is?

A. Well, it lies south of the Roaring Fork above Carbondale, just about four miles above Carbondale, and it lies west of Mr. Light's ranch, or the Sopris Creek.

Q. It is bounded on the north, then, by the Roaring Fork?

A. On the north by the Roaring Fork.

Q. And bounded on the east by West Sopris Creek; is that right?

A. On the east?

303 Q. Yes.

A. Why yes East and West Sopris Creek.

Q. East and West Sopris Creek on the east, and on the west it is bounded by the Big Four Ditch?

A. Yes.

Q. And on the south by the forest reserve?

A. Forest Reserve.

Q. And do I understand you to say that there is no water in the Crown range?

A. I have never seen any there except in the early spring; there are a couple of little pools up there that we call creeks.

Q. And is there any water in the Roaring Fork river?

A. There is a little, I don't know how much.

Q. You have seen the Roaring Fork river?

A. Yes. I would like to state that there is abundance of water in Roaring Fork.

Q. You won't say that there is a little water in the Roaring Fork?

A. No, hardly.

Q. And how about the East and West Sopris creeks?

A. They usually have water in them.

Q. Don't they always have an abundance of water all the time?

A. Not abundance, but they always have plenty for what stock is in that country.

Q. Have you ever seen either of those creeks dried up?
A. No sir.
Q. Is there a big flow of water all the year in those creeks?
A. There is always water.
Q. Isn't there good fishing up those creeks?
304 A. There is fishing there, I don't know how many you could catch.
Q. Plenty of water for all the cows that would stay there?
A. Yes, all the cows that would stay there,—an abundance of water.
Q. Isn't there enough water in the creek to water ten thousand cows every day?
A. I suppose there would be.
Q. But you still think that the Crown country is poorly watered?
A. I know that the Crown country is poorly watered.
Q. How far do you think that a cow may go to water without hurting it, every day?
A. All depends on the condition of the cow, whether southern or homebred cow.
Q. Take the average home-bred cows you have been used to over in that country, how far can they go without great damage, or any damage, to them, for water?
A. I don't know what their constitution is, but I think they would go about a mile, maybe.
Q. You don't think they would go more than a mile for water?
A. They would if they got thirsty.
Q. If they went more than a mile it would probably damage them?
A. If they was in very good condition it would not; if they was thin I don't know *bit* it would.
Q. You spoke of the people near Emma turning out five hundred head of cattle upon a certain portion of that range. Do you mean the Crown range?
A. No, I mean that they turned them out on the Sopris Creek, on the main Sopris Creek and on East and West Sopris
305 Creek.
Q. Yes. And what cattle were turned out on Prince Creek.
A. On Prince Creek?
Q. Yes.
A. Why, the "Four Bar" (=—=) cattle belonging to the Dinkle Mercantile Company.
Q. How many of them, approximately, seven hundred about?
A. Why I have a copy of the permit.
Q. Didn't you say awhile ago that there was about seven hundred turned out?
A. On Prince Creek. There is more than that turned out but they generally all go up Prince Creek.
Q. Where is Prince Creek; does that map show it?
A. No, this map doesn't show Prince Creek.
Q. Where is Prince Creek, further west?

A. Further west of Sopris.
Q. Over towards Carbondale?
A. Yes, runs down to Crystal river.
Q. Does that run anywhere near the Crown country range?
A. Yes, it bounds the Crown country property.
Q. On the north?
A. On the west,—west and southwest.
Q. Can cattle get on to that creek for water off the Crown country range?
A. Yes.
Q. How many more cattle were there over there with permits this summer on the territory south, the territory of the forest reserve southwest of Mr. Light's, do you know?
A. How many more?
Q. How many cattle, you have got twelve hundred, how
306 many more cattle were over there?
A. I couldn't say hardly.
Q. Did Williams Brothers have any cattle over there?
A. No, most of their cattle was back more towards Light's, up on the reserve, that way.
Q. Oh, they were back of Light's were they?
A. Yes, I never remember of seeing any on Prince Creek, or the Crown.
Q. Now those twelve hundred head that you spoke of being on Prince Creek and the Crown, they were run by people who had permits, weren't they?
A. Yes sir.
Q. And how many did the Williams Brothers have on the Holy Cross reserve close to Light's?
A. I couldn't say as to that: I seen several head up there.
Q. Have you an idea whether they had two or three hundred head?
A. Yes, by the sized bunches and taking everything into consideration I think they must have had that many anyway, if not more.
Q. Did Mr. Cookman have any cattle up there?
A. Yes, I seen some of Cookman's.
Q. Did Mr. John White have any cattle up there?
A. Yes sir. Do you mean on the forest reserve?
Q. Yes.
A. Yes.
Q. Did Mr. John Watson?
A. Sam Watson.
Q. Did Sam Watson have any cattle?
A. I seen a few.
Q. He had a permit, didn't he?
A. I could not say as to that.
Q. And did any of the ranchers up Sopris Creek above
307 Mr. Light's have any cattle on the reserve this year?
A. Albert Maurin had some cattle there.
Q. Those of course were run by permit?
A. Well, I was led to believe they was.

Q. And any others besides those of Albert Maurin?

A. Why there was Jacobson, I suppose that he had some, I couldn't say for sure, and Ibe.

Q. Well, how many cattle would you figure were running on that portion of the Holy Cross reserve this past summer, leaving out Mr. Light's cattle?

A. I couldn't say I am sure.

Q. Mr. Powell, you still think there is no grass down in that country northwest of Mr. Light's?

A. Yes sir.

Q. And you didn't see any cattle down there at all, did you?

A. Yes, I saw some cattle down there; I seen, I believe the last day I was over there—I didn't see any on West Sopris, but the time before I was there I seen about thirty head down below Light's and into the west of Light's ranch.

Q. Now years ago when you were younger you used to see more cattle over there, didn't you, than you do now?

A. Well, yes, I seen some more I think.

Q. Wouldn't you say a good many more, rather than some more?

A. No I would not.

Q. Isn't it true that the forest rangers make a business to
308 handle cattle up on the high range?

A. That is the regulations.

Q. And don't most of them comply with it more or less?

A. Yes sir.

Q. And isn't it a fact that one reason why you don't see more cattle down on the lower range is because cattle have been tolled up higher with salt, or by driving?

A. Why I don't think so.

Q. Cattle cannot very well go up on the high range and then go the next day to the low range?

A. No.

Q. Mr. Powell, explain to me why you think that you don't see any cattle down on this lower range now?

A. Cattle are not in the habit of staying where there isn't anything to eat, in my estimation.

Q. So you wish the court to understand that there is nothing to eat during the grazing season upon this lower range?

A. That is along after June, not after the first of June.

Q. Is there anything to eat there in the Fall or Winter?

A. Oh, there is a little, not very much, sometimes, it all depends on the rainfall there is along in the Fall.

Q. Do you remember that cattlemen have wintered cattle on the Crown range?

A. They might have somebody tried it, but they never have made a success; I don't believe they ever did winter cattle on the range; I know they didn't in the winter time.

Q. It is hard to winter cattle at that altitude?

A. Yes, it is impossible unless they are fed, it can not be done.

309 Q. And you think that blue-stem is a poor feed?

A. No sir, I think blue-stem is the best feed for horses and cattle that there is, when there is any.

Q. But there is no blue-stem in this Crown country range, or range northerly?

A. In the early spring there is.

Q. Now at this time of the year have you looked over that range recently?

A. Yes.

Q. Is there any feed or grass over on that range now?

A. None; well down the creek there is a little grass owing to the rainfall being so good this Fall.

Q. You have seen very few cattle on that range this summer?

A. Very few.

Q. Their tendency has been, as long as the cattle owners will comply with the rules and regulations, to get the cattle as high up as they can?

A. That was always the case before the reserve was made.

Q. And it is yet?

A. Yes.

Q. And the cattlemen who have permits have more or less complied with those regulations, have they not?

A. Yes. In regard to salting and things like that.

Q. And have more or less kept their cattle up on the forest range this past summer?

A. I never seen anybody driving them up.

Q. You have not?

A. No, only on this other district lying west of the Crystal river, of course, that is off of——

310 Q. Do you know that it was the custom of Fred Light in the past before the establishment of the forest reserve, to drive his cattle up on the hills?

A. Only from hearsay. I will contradict that, I did see Mr. Light's sons driving cattle up on the range one summer.

Q. And do you know of other people in the old times having to drive their cattle up on the hills to keep them away from eating the grass around the home?

A. Yes, I have done it myself: I have drove up Sam Watson's and numerous others that I worked for in the country on the higher ranges.

Q. Why did you drive them up?

A. Why there was nothing for them to eat down around the ranches, and I wanted to keep them up as long as possible to get the benefit of the range.

Q. They wouldn't go up there themselves, would they?

A. No, that is, not after cold weather sets in.

Redirect examination.

By Mr. KNAEBEL:

Q. When would they drive them up there, what season of the year?

A. Along in September, usually, after the first snow.

Q. Cattle have a tendency, then, to come down with the cold weather?

A. Yes, always.

Q. The ranchers there all have to feed their cattle during the winter?

A. Yes sir.

Q. Upon fodder that they raise on their land?

311 A. On their ranches, yes.

Q. What relation had the practice of driving cattle back upon the forest, to the question of winter feed?

A. Well, they would keep them up there as long as possible and get out of feeding them.

Q. This year the rainfall was unusually heavy, wasn't it?

A. It was very heavy.

Q. Something was said about lakes, and you yourself have referred to mud holes in this Crown country?

A. Yes.

Q. I wish you would state whether you know of a lake called "Dinkle Lake"?

A. Yes sir, that is on,—half in and half out of the forest reserve; it is all under fence; it is owned by The Dinkle Mercantile Company; it supplies water for the Big Four ranch; in fact that is all the water that would be in Prince Creek along in the summer besides just a few little springs—seeps.

Q. Is that in the Crown country?

A. It is on the west Crown country that this ditch comes from the Dinkle Lake.

Q. What if any other lakes are there in the Crown country?

A. I have never seen any other lakes; I have seen little pools there in the spring of the year.

Q. Have you seen anything in the nature of a body of water that was spoken of as a lake up there?

A. Of course pretty near everybody in that country
312–314 calls every little pool as big as this room a lake, but virtually there is no water there at all now, only just a little seep; I suppose it might water two or three head of cattle if they waited around there long enough. There mght be another lake, but I won't say as to that; I have never seen it and I have rode that country as thoroughly as I could.

Q. Have you ever heard of one?

A. I never did.

Q. What, in your judgment, is the condition from year to year now of the range around Mr. Light's and up in the Crown country, compared with what it was a number of years ago? Is there any difference?

A. In my opinion it is worse.

Q. And have you any reason upon which that may be accounted for?

A. Well, one reason I think in late years there hasn't been as much rain in the last of the season as there used to be, consequently

there wasn't enough moisture there in the winter to start the grass like it usually did.

Q. Mr. Powell, one question I omitted to ask on the direct; I would like your statement as to the condition of the forest range to the west and southwest of Mr. Light in respect of whether it has or has not been over-grazed?

A. Why, yes, I think it has been over-grazed this summer to a certain extent.

Recross-examination.

By Mr. WARD:

Q. Who over-grazed the forest range?

A. Why that is hard to say.

Q. Under whose control is the forest range?

A. The forest reserve.

315 Q. Yes, the forest reserve?

A. Why the United States is, to my knowledge, so far as I know.

Q. And the cattle that were there, with the exception of Light's, all had permits?

A. I never heard of any that didn't have.

Q. But you think, though, that with even the management as it has been over there that the lower portions are over-grazed?

A. Yes, I do.

Q. Do you recollect the spring of 1907 as to whether it was wet or a dry spring?

A. Why I couldn't say as to that,—1907.

Q. As to 1908?

A. As to 1908?

Q. Yes.

A. It was dry in the early spring.

Q. How about the summer of 1908,—wet or dry?

A. There has been quite a bit of rainfall the latter part of the summer and Fall.

Q. Was it wet or dry?

A. The rain was, it was wet.

Q. The season?

A. I would call it a wet season.

Q. But you still think the range is worse than it used to be?

A. Yes I do.

Q. In the good old days?

A. In the good old days, yes, sir.

Q. When they didn't have salt on the mountain tops?

A. They have always been salting more or less you know, not quite so many of them.

Q. Up on the higher range?

A. It used to be the custom.

Q. Whom did you see put salt up there?

A. Tucker and Schloss.

316 Q. When?

A. Five or six years ago.

Q. Where did they put salt on the higher range?
A. Where most people are putting it, in the Hay Park.
Q. Is that in high range?
A. Flat tops.
Q. Who put it on the flat tops?
A. My father has put it up himself.
Q. When?
A. Oh every year for the last fifteen years I guess until he sold out up there.
Q. How big a herd of cattle did your father have during those years that he put salt up there?
A. He had all the way from one to fifty.
Q. And how far did he have to go to get that salt up there from his home place.
A. And then Sam Watson——
Q. How far did your father have to go from his home place to get the salt on the hills?
A. Four miles, not to get it on the hills, to get it out where he put it.
Q. Where did he put it?
A. In Hay Park or little flat top, up to the east of Capital Creek.
Q. How far east of Fred Light's place did your father live then?
A. How far east did he live?
Q. Yes.
A. Oh I should judge that he lived twelve or thirteen miles.
Q. Twelve or thirteen miles?
A. Yes.

Q. And how far west of southwest of Mr. Light's ranch
317 was this place where your father put salt?

A. Why about eight miles; I don't know whether it is that far, maybe about six miles, I guess he does not live as far; I didn't measure it, I have been over there lots of times.

JAY BURDICK, a witness called on behalf of the complainant, being duly sworn testified as follows:

Direct examination.

By Mr. KNAEBEL:

Q. How old are you, Mr. Burdick?
A. Thirty.
Q. You are a forest ranger?
A. Yes, sir.
Q. How long have you been such?
A. The 1st of May 1908.
Q. And where has your work as ranger been?
A. The 8th district of the Holy Cross National Forest.
Q. Anywheres near Mr. Light's, if you know where that is?
A. Yes, his ranch is in that district, commonly called Capital Creek District.
Q. Were you assigned at any time to make an examination to see whether Mr. Light had any stock upon the Holy Cross reserve?

A. Yes sir, those were our instructions early in the season to take notes on the presence of Light's cattle upon the forest.

Q. Now so far as you were able to do so, what did you find in that regard?

A. Do you wish dates and numbers?

Q. Yes.

A. I took notes every time I saw his cattle. I can give you a list of the dates and numbers seen on those dates.

318 Q. I refer now only to the stock that you found upon the Government land.

A. Found on the Holy Cross National Forest district, that district before named, Capital Creek district: May 28, five head of T V, four head of U. Slash U. June 2nd, one U. Slash U. June 4th, one T V, three U. Slash U. June 5th, fourteen T. V. June 17th, eleven U. Slash U. June 22nd, three T V. June 24th, eight U. Slash U. June 30th, four U. Slash U. July 16th, two T V. July 23rd, one T V, five horses. August 4th, two T V. August 13th, two horses branded "T V". August 23rd, six U. Slash U. four T V and five horses.

Q. How were these horses branded?

A. Box L.

Q. Now go on, please.

A. August 28th, three U. Slash U.

Q. Were those the results of your observations in the course of your general duties as ranger in riding the range?

A. Those are my results of my general duties in riding the range, and this business as well as other business, traveling back and forth across the range, and when I have seen these cattle I have made a note of it.

Cross-examination.

By Mr. WARD:

Q. You were instructed especially, Mr. Burdick, to look up Mr. Light's cattle?

A. To look out for his cattle as well as others that might be trespassing.

319 Q. And of course you could not tell on these various dates whether the cattle you saw one date may not have been some animal you had seen two weeks before?

A. No, sir.

Redirect examination.

By Mr. KNAEBEL:

Q. Did you make any examination of the country north and east of Mr. Light's ranch which he calls the "Spring ranch" to find if there were any of Mr. Light's cattle upon it?

A. Yes sir.

Q. When did you do that?

A. The early part of September this year.

Q. Did you examine it before that?

A. Yes sir.

Q. When?

A. I was over that country in May and again in July; I have ridden over that country numerous times during the summer.

Q. State when, if ever, you saw Mr. Light's cattle upon it?

A. I can refer to the notes and give you the dates on that. On September 2nd I rode that country, and found sixteen head of T V cattle; the old cattle bore these brands here, also branded WL. On September 8th I returned through that country just as it was getting dark and counted nine head of T. V. September 9th. I only saw one head of Light's cattle on the hill sloping towards Capital Creek. That would be the eastern side of that hill: those cattle came to Capital Creek to water, there were twenty-three head came to Capital Creek to water that morning.

Q. Where were these cattle that you have spoken of?

A. They were northeast of Light's ranch.

320 Q. Did you see any of his cattle in that locality northeast of his ranch?

A. There was one of his cattle that date, September 9th, one of his among twenty-two others. I can give you the brands of the others.

Q. I don't want them.

A. September 10th.

Q. What were they, same as before September?

A. There were no cattle on that hill before the 1st of August; I rode home two times during July, didn't make any special note of dates, but there were no cattle in that country in July.

Q. And in May?

A. None in May, nor June.

Q. Saw some in August?

A. Some in August.

Q. About how many?

A. Oh, maybe ten or fifteen of his cattle there.

Q. And when did the rains begin?

A. Along in August I should think, about the middle of August.

Q. Do you know when the stock began to drift down out of the forest this last summer?

A. The stock began to drift down, well sometimes they will be a few scattered along the roads leading to the forest more or less all summer, half hid in the road.

Q. And this year was it later or earlier than usual?

A. I couldn't say as to former years, but this year there are cattle in the road that are drifting down all the time, and they are pushed back up again from time to time.

321 Recross-examination.

By Mr. WARD:

Q. Mr. Burdick, when did you come there to Mr. Cookman's place?

A. The first of May, the first I went on duty as a forest ranger.

Q. And do I understand—I may be mistaken—that there were no cattle of Mr. Light's on that mountain north of him during the month of May?

A. I didn't see any.

No 667 Light } p 323

RANGE 87 W.

RANGE. 86 W.

RANGE. 85 W.

T.8.S.

T.8.S.

T.9.S.

T.9.S.

HOLY CROSS NATIONAL FOREST

HOLY CROSS NATIONAL FOREST

Frying Pan

Sopris Creek

East Sopris

DE 177

DE 311

DE 601

DLE 659 UTE

DE 285

DE 285

DE

DE 781

DLE 432

DE 491

DE 510

DE 472

DE 414

DE 956

DE 418

DLE 560

DEN 561

DLE 571

DE 437

DLE 459

DE 562

DE 631 UTE

DE 343

DE 343

DE 772

DE 431

DE 557

DE 570

DE 198

DE 427

DE 567

Patented.

Entries.

Mr. Light's.

Mr. Light's Fence (approx.)

Q. Did you make any especial examinations for them?
A. I rode over that country once or twice during May.

Redirect examination.

By Mr. KNAEBEL:

Q. What time in May?
A. I rode the country once early in May, and again later the first week in May I rode over once.
Q. And the last time was when?
A. The last time was about two weeks later.

It is hereby stipulated by the parties to this cause through their respective counsel that the depositions of the witnesses John McLaren, W. S. Copeland, Harry H. French, Gideon Cookman, N. S. Ashlock, Frank A. Powell and Jay Burdick which have been taken before Sanford C. Hinsdale, Esq., upon September 24th, 25th and 26th, and reduced to stenographic minutes by Miss Nellie Preston, Stenographer, pursuant to the consent of the said counsel, may be by the said stenographer transcribed into typewriting, and as so transcribed may be certified by the Examiner to the court as testimony duly and properly taken in the cause; and that the signatures of the several witnesses to their respective depositions are hereby waived.

Adjourned subject to notice.

322 UNITED STATES OF AMERICA,
District of Colorado, ss:

I, Sanford C. Hinsdale, duly appointed Examiner in Chancery by the Circuit Court of the United States for the District of Colorado, do hereby certify that on the days mentioned in the proceedings and depositions in this cause I was attended by the counsel and witnesses aforesaid at my office, room 803 Continental Building, Denver, Colorado; that said witnesses, to-wit, John McLaren, W. S. Copeland, Harry H. French, Gideon Cookman, N. S. Ashlock, Frank A. Powell and Jay Burdick, each were first duly sworn according to law, as witnesses in the suit or cause in the caption hereto mentioned, and there examined before me orally by counsel; and by the consent of the parties by their several said solicitors the examinations and depositions of said witnesses were severally stenographically written down and afterwards typewritten; that such examinations were had in the presence of the solicitors of the several parties hereto, and that said depositions, after being completed and typewritten, were duly sworn to by the said witnesses, whose signatures thereto were waived by stipulation of counsel.

I further certify that the foregoing is a true statement of all the proceedings had before me on the days mentioned, in the matter of taking testimony herein, and that complainant's exhibits marked 1 to 6 inclusive were duly introduced in evidence, and are herewith returned into court.

SANFORD C. HINSDALE,
Examiner in Chancery.

(Here follows diagram marked p. 323.)

324-325

EXHIBIT No. 4.

Compl't's Proofs.

S. C. Hinsdale, Examiner.

Executive Order.

Holy Cross National Forest.

Colorado.

It is hereby ordered that on and after July 1, 1908, the land within the boundaries shown on the attached diagram, heretofore set apart, reserved, and proclaimed as parts of the Holy Cross, Leadville, Gunnison, and Battlement Mesa National Forests, shall be known as the Holy Cross National Forest. The remaining portions of the Holy Cross National Forest shall continue reserved and constitute parts of the Leadville National Forest. It is not intended by this order to release any land from reservation or to reserve any land not heretofore embraced in a National Forest.

THEODORE ROOSEVELT.

The White House, July 1, 1908.

[No. 870.]

(Here follows diagram marked p. 325*a*.)

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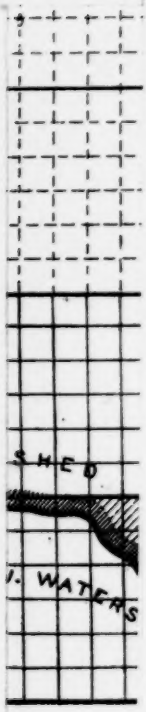


R. 83 W.

326–328 (Endorsed:) No. 5153. United States Circuit Court district of Colorado. The United States vs. Fred Light. Complainant's Testimony and Exhibits 1-4 inclusive. S. C. Hinsdale, Examiner. Filed Dec. 22, 1908. Charles W. Bishop, Clerk.

Forty-first Day, November Term, Tuesday, December 29th, A. D. 1908.

Present: The Honorable Robert E. Lewis, District Judge and other officers as noted on the third day of November, A. D. 1908.

In Chancery. 5153.

THE UNITED STATES OF AMERICA
vs.
FRED LIGHT.

Bill for an Injunction and for Other Relief.

This cause coming on now to be heard, Ernest Knaebel, Esquire, appearing as solicitor for the complainant;

And thereupon, on his motion, it is ordered by the court that all depositions now in the office of the clerk of this court in this case, be opened, published, and filed, which is accordingly done.

329 UNITED STATES OF AMERICA,
District of Colorado, ss:

In the Circuit Court of the United States Within and for the District of Colorado.

No. 5153. In Equity.

UNITED STATES OF AMERICA, Complainant,
vs.
FRED LIGHT, Defendant.

Be it remembered, that on the eighth day of October in the year of our Lord one thousand nine hundred and eight, in pursuance of the notice and proof of service thereof hereto attached, the parties to the above entitled cause appeared before me, Clifford G. Rowe, Special Examiner in Chancery of the Circuit Court of the United States for the district of Colorado, at my office in Glenwood Springs, State of Colorado; the complainant in said cause by Ernest Knaebel, Esq., and the defendant by Ethelbert Ward, Esq.

And on the said above mentioned date came also before me William W. Williams, Marcus Lafayette Shippie, William P. Finley, Harry M. Shuttleworth, U. M. Trout, W. L. Girdner, J. W. Zimmerman, Frederick Light and E. M. Ammons, to testify as witnesses on behalf of the defendant; and also came Harry H. French to

testify as a witness on behalf of the complainant in said cause; and the said witnesses having been by me first duly cautioned and sworn according to law respectively, to testify the truth, the
330 whole truth, and nothing but the truth in the matter and suit in controversy aforesaid, were severally examined before me on oral interrogatories propounded to them respectively by counsel, as in their several depositions fully appear, that is to say:

Index.

Defendant's Witnesses.

	Direct.	Cross.	Redirect.	Recross.
William W. Williams	1	14	27	30
Marcus Lafayette Shippie ..	31	45	59	
William P. Finley	60	66	69	70
Harry M. Shuttleworth....	73	79	71	72
U. M. Trout	80	83	89	
W. L. Girdner	91	96	102	105
J. W. Zimmerman	107	110	106	
Frederick Light	111	131	140	140
			141	141
E. M. Ammons.....	143	154		

Complainant's Witness.

	Direct.	Cross.	Redirect.	Recross.
Harry H. French	158	161	163	164
			165	165

WILLIAM W. WILLIAMS, being duly sworn, testified as follows:

Direct examination.

By Mr. WARD:

Q. Mr. Williams, where do you reside?
A. Pitkin County; post-office Snow Mass.
331 Q. In reference to Mr. Fred Light's ranch where do you reside?
A. Why, about two miles and a half east.
Q. On what creek do you live?
A. Snow Mass.
Q. And where is your ranch,—the Williams Brothers ranch?
A. Snow Mass, Capital Creek.
Q. How long have you lived in that vicinity, Mr. Williams?
A. About twenty years.
Q. What is your occupation?
A. Cattle ranching.
Q. With whom are you doing business?
A. Well, most everybody.
Q. I mean who are your partners?

A. Oh, my brothers Harry C. and J. W. Williams.

Q. How long have your brothers been doing business in that country?

A. We have been doing business together on the ranch four years.

Q. How long have you been running cattle?

A. Four years in our own name,—Williams Brothers.

Q. How long have you been handling cattle?

A. I have been handling cattle nearly four years in our own names, and in father's name for twenty years.

Q. On what range have you been handling cattle?

A. Snow Mass, Capital Creek and Sopris.

Q. How far to the northwest have you handled your cattle from your place?

A. About twenty miles.

Q. How long have you been familiar with the range between Snow Mass on the east and Crystal river on the west?

A. Fifteen or eighteen years.

332 Q. How frequently do you go over this range?

A. Three and four times a year maybe, and then maybe go down there and stay a week at a time.

Q. How many acres of land have the Williams Brothers?

A. We have about nineteen hundred acres.

Q. And how many cattle have you been running the past two years?

A. About eight hundred head.

Q. Have you seen the range that you have just spoken of during the year 1907?

A. Yes Sir.

Q. How familiar are you with the condition of the range during the year 1907?

A. Very familiar.

Q. How about the year 1908?

A. Familiar with it.

Q. What is the condition of the country in reference to fences throughout that territory; where are the fences?

A. The fences on the west are about half a mile from Sopris Creek, running up to within a mile of the Reserve.

Q. Beginning from what point?

A. Beginning at Sopris Creek below Fred Light's.

Q. At whose fence?

A. Fred Light's fence.

Q. Where are the fences along the Roaring Fork river; how far do they extend; I mean from the river?

A. From Snow Mass, the mouth of Snow Mass to Emma, about a quarter of a mile south of the river, South and East Sopris.

Q. How far may you go in the direction of Carbondale on that range before you strike fences?

A. I believe about the first fence you strike is the Big Four Ranch.

333 Q. How far is that from your ranch?

A. About sixteen or seventeen miles.

Q. How does that run with reference to cutting off the range, if at all?

A. It has no interference with the range at all.

Q. What is the character of the country southeast of you, toward Aspen in reference to fences?

A. Well, it is fenced in different places, but nothing to stop any cattle from going in there.

Q. Is there any range for cattle?

A. Yes.

Q. Between you and Aspen?

A. Yes, Sir.

Q. About how far is it to Aspen from your place?

A. About twelve miles air line I would judge.

Q. About how wide is the unfenced range; about what is the average width of the unfenced range, beginning at Fred Light's place, up towards Carbondale; how wide is that?

A. About seven miles, running north and south, and about fifteen or sixteen miles running east and west.

Q. Does that include any portion of the Forest Reserve?

A. A portion of it, yes.

Q. How much of *it* that would be in the Forest Reserve?

A. Well, I won't say definitely; I would say five miles east and west, or I should say five miles north and south—and does not interfere east and west.

Q. You spoke of the range being about seven miles wide?

A. Yes.

Q. How much of this seven miles in width is in the Forest Reserve?

A. I should judge about two miles.

334 Q. What is the character of the grass upon the open range outside of the Forest Reserve this year.

A. Bunch Grass, blue stem, wild oats, wild peas.

Q. What is the character of the grass in reference to quantity and quality?

A. Very good,—the best.

Q. How is it in comparison with years past?

A. Well, it is as good as I can remember.

Q. What evidences are there upon the range you have described, lying between your place and Carbondale, of the cattle that have been on there this year?

A. Why good shape, fine shape.

Q. What do you mean by "good shape"?

A. Well, what we call grass beef area.

Q. What is the present condition of that range?

A. Very good shape.

Q. What evidences are there, if any, of that range having been overfed?

A. Why, not any.

Q. What evidences were there during the year 1907, if any, of the range having been overstocked?

A. Not any.

A. Or over-fed?

A. Not any.

Q. What was the condition of that range during the year 1907?

A. Good range,—fine grass.

Q. Have you an idea of the number of cattle that have been ranging in that territory this year,—1908?

A. Why about two thousand head, I should judge.

Q. What is the capacity of that range in reference to that number of cattle?

A. Why, it feeds them all.

335 Q. What, if any, would it support more?

A. Yes.

Q. Approximately how many?

A. Well, that is a pretty hard thing to say, just how many; I would say five hundred head more.

Q. What portion of the range have you reference to?

A. Of that range,—that is I mean the forest reserve, what is now the forest reserve, and the public domain.

Q. In the territory just described?

A. Yes.

Q. Are you familiar with the number of cattle that ran there some six or seven years ago?

A. Yes, quite familiar.

Q. Approximately how many would run upon that same range?

A. Well, about three thousand head, I should judge.

Q. Were there then any evidences of over-grazing or over-feeding?

A. No, there were not.

Q. Have you at any time noticed the range having been badly over-eaten or over-grazed.

A. At no time, but in certain portions around salt beds, or around certain fences,—something like that.

Q. What are the feeding qualities of blue-stem?

A. The best grass we have.

Q. What is the comparison between the higher range in the forest reserve and the lower range spoken of, in reference to the fattening qualities of cattle?

A. The lower range is the better. By going higher in the summer time the grass is soft, it does not put on the fat that the lower range does, and when the grass becomes harder higher up the snow usually drives the cattle down on to the lower range,

336 so consequently we do not get the benefit of the higher range that we do the lower, which I presume would be nearly as good if we could get the benefit of it; it is covered with snow now.

Q. Is there any difference between hardened grass and green, fresh grass?

A. Yes.

Q. What is the difference in reference to the fattening qualities?

A. Makes the fat harder.

Q. Did you notice that range north of Mr. Light's ranch this Spring?

A. Yes, sir.

Q. What was the condition of the grass during those times you noticed it?

A. Very good. It is as good as I ever seen it.

Q. What evidences, if any, were there of any over-stocking of that range?

A. Not any this year.

Q. What about the present condition now, at this time?

A. Very good.

Q. As compared with former years?

A. About the same as former years.

Q. And no evidence of over-stocking or over-grazing?

A. No.

Q. How is that range watered?

A. Why, there is small creeks and springs.

Mr. KNAEBEL: May I ask what range you refer to?

Q. The range between your house and Carbondale.

A. Small creeks and springs.

Q. From your experience as a cattle man what is your opinion as to whether or not the range is well watered or poorly watered?

A. Well watered.

Q. Are you familiar with the Crown country?

A. Fairly familiar with it.

337 Q. How is that country in reference to grass and water?

A. Very good.

Q. As a cattleman would you say that the water is inaccessible and far away?

A. No, sir.

Q. What distance would an animal ordinarily have to go in that country to get water?

A. I don't believe the furthest would be over a mile and a half from any portion of the country.

Q. From your experience as a cattleman what effect would that have, if any, upon the animal.

A. Well, for just stock cattle it wouldn't have any particular effect on them; of course for beef it would effect them.

Q. To what extent?

A. Well, which do you mean?

Q. The beef, I mean.

A. Well, I don't believe you can put beef on cattle by driving them off far, or having them go far.

Q. How many portions of that territory are there that would necessitate cattle going that distance?

A. Well, there is very few; in a portion of what is known as the "Crown country", and I would say that is about all that I know.

Q. Mr. Williams, the territory—unfenced territory between East Sopris Creek and the forest reserve,—you are familiar with that?

A. Yes, sir.

Q. Is there any water there?
A. Yes, sir.
Q. Outside of the forest reserve?
A. Yes, sir.
Q. At what points is there water?
338 A. There is water below Mr. Light's ranch—that would be west and north—and above Mr. Shuttleworth's ranch, which would be south; and also west most anywhere from Mr. Light's ranch; most any of that country in there you can get water.
Q. At what distances apart?
A. Oh, not over a quarter of a mile, or half a mile at the furthest.
Q. What is the condition of the grass on that particular range outside of the forest reserve this year?
A. Mostly blue-stem.
Q. Not as to quantity, but quality.
A. Plenty of feed for the stock that has been there.
Q. What indications are there of over-grazing or over-stocking this year?
A. Not any.
Q. How about last year?
A. Not any last year.
Q. Are you familiar with Mr. Light's custom of handling his cattle?
A. Yes, sir.
Q. Where does he turn them out in the Spring?
A. Usually turns them north of his place,—a few west I suppose, but most of them north.
Q. What is the condition of the range there in the spring where he turns them?
A. Why it supports the cattle; it is the earliest range we have, and they usually get the first grass that comes.
Q. Did you notice that that range north of his place was badly over-eaten this spring?
A. No, sir.
Q. Was it?
A. That is, not from the condition of the stock.
Q. Was it badly over-eaten?
A. No, sir.
339 Q. When is it practicable for cattle to begin grazing upon the forest reserve southwest of Mr. Light's place?
A. Very little before about the 10th of June in ordinary years, I don't believe.
Q. What is the character of the country, the topography of the country north of Mr. Light's ranch?
A. It is,—well ordinary cattle country, mountainous, and blue stem grass and brown grass, some bunch grass,—smooth enough.
Q. Is it easy or difficult for catle to graze upon that?
A. Easy.

Mr. WARD: We wish to introduce Defendant's Exhibit E.

Q. The country in the background of Exhibit E is the country

that you have just spoken of as in what direction of Mr. Light's ranch?

A. North.

Q. Before the forest reserve was established what was the custom in reference to handling cattle in that territory as between the low lands and the high grounds?

A. We usually turn out about the first of April on this mountain here, and also back of our own place, and leave them there for a month or such a matter and then take them up on East Sopris, west and south of Mr. Light's and up Capital Creek.

Q. Do you have any difficulty in keeping them up there?

A. Yes, sir. We have to take them up, oh, sometimes three and four different times.

Q. What is the object of that?

A. Well, they just keep coming back and we want to keep them up.

Q. What is the object of keeping them up there?

A. Well, we like to have this range that you have spoken
340 of here for the fall and winter range for cattle coming down in the fall so there will be some grass there in the fall.

Q. Isn't it a fact that there is not enough grass in the lower range to support them?

A. Yes, sir.

Q. That there isn't enough?

A. There is enough.

Q. But you wish to save it for the fall and winter grazing?

A. For the fall and winter grazing.

Q. What effect does putting salt upon the high range have in getting cattle up there?

A. By salting, the cattle run on the salt-beds.

Q. In your opinion as a cattle man, would the fact that salt has been placed in a large number of places upon the forest reserve have any tendency to toll Mr. Light's cattle up there?

A. Yes, sir. The cattle that has been on the range prior to 1908 will drift back to the range to where they have been running years before.

Q. And if it should appear that Mr. Light had bought a new bunch of cattle in the winter of 1907 and '8, that had come from an entirely different territory, would they have a tendency to go up on this range?

A. They would never see the forest part of it if they wasn't driven there.

Q. What effect would the driving of other cattle, and the putting of *salt* have upon Mr. Light's cattle?

A. Well, the old cattle would naturally go there, and the new cattle wouldn't move without they were driven, ordinarily, some would go there.

Q. Well, they do stray, though, over that entire territory.
341 A. Yes, sir.

Q. What per cent., if you can say, of the cattle, before

the establishment of the forest reserve, would voluntarily go upon the high range?

A. Well, that is pretty hard to say; not over a third I shouldn't judge.

Q. Would they be up there all the time during this grazing season?

A. Nearly all the time.

Q. What is the condition of the banks of Sopris Creek in reference to cattle getting to water in that territory?

A. They can get to water, very easily accessible to the water.

Q. In reference to the other grass there, what is the condition as to the accessibility to water?

A. Easily.

Q. Have you taken out a permit for grazing cattle in the season of 1908?

A. Yes, sir.

It is stipulated by and between the respective solicitors that Defendant's Exhibit H is a blank form of the regular application for a grazing permit issued by the Forestry Department for the Holy Cross Reserve.

Mr. WARD: We introduce Defendant's Exhibit H.

Mr. KNAEBEL: Objected to as immaterial.

Q. (Showing witness Exhibit H.) Do you recognize that as an application similar to that which you signed?

A. Yes sir.

Q. I call your attention to the following: "I also hereby agree that I will allow my stock to graze only upon the area specified in the permit, and that I will obey and support all the laws
342 and regulations governing national forest reserves." Is it possible for you to comply with that portion of the application?

Mr. KNAEBEL: This is objected to as incompetent and immaterial.

A. We were not notified to range our cattle on any specified portion of the range,—that is, of Capital Creek or Sopris Creek.

Q. Is it possible for the successful handling of cattle in your country for you to comply strictly with the requirements of the permit and the application for the permit?

Mr. KNAEBEL: This and all similar questions are objected to upon the grounds that they are incompetent and immaterial, without repeating the same objections as to future questions.

Q. (Question read).

A. I don't know as the permit interferes so much with the industry of the cattle raising.

Q. Are you familiar with the provisions of the permit and the application?

A. I knew it but I have forgotten (reading application).

Q. What is the custom of cattle men in your vicinity, of handling the cattle during the grazing season?

A. We usually turn them out in the Spring of the year when the grass is favorable on the lower ranges, and leave them there until it becomes good enough for them up higher.

Q. What custom have you, if any, in reference to herding them and driving them from place to place?

A. We don't herd them any, hardly.

343 Q. What effect, if any, upon the cattle business would continuous herding of cattle have?

Mr. KNAEBEL: That is objected to as immaterial.

A. It would have a very bad effect on them.

Q. Are you familiar with the rules and regulations of the Forestry Department in reference to herding and handling cattle, as directed by rangers?

A. No, I am not.

Q. If the rules and regulations gave rangers power to move your cattle, handle and herd them at any time, what effect would that have upon the cattle business?

Mr. KNAEBEL: Same objection.

A. The effect would be bad and it would be almost impossible to do it in that country; that is, certain portions of cattle. Of course you could get enough and move the whole bunch, but to move certain ones it would be hard to do.

Q. I hand you complainant's Bill, and call your attention to Regulation 47, which you will please read.

(Witness reads Regulation 47).

Q. What effect, if any, would restricting the enforcement of Regulation 47, have upon the cattle?

Mr. KNAEBEL: Objected to, and I move that the answer be stricken out, as incompetent and immaterial.

Q. Have you noticed the forest range in the neighborhood—I mean the forest reserve in the neighborhood of Mr. Light's ranch this year?

A. Yes, sir.

344 Q. What is the condition there in reference to the grass, and so on, at the present time?

A. Well, about the same as on the public domain.

Q. Where do cattle graze upon the forest reserve, in the trees or out of the trees?

A. Mostly out of the trees.

Q. Is there any grass under the trees in the forest reserve?

A. Not in the thickly treed country.

Q. You have seen cattle grazing upon what is now the reserve, for a number of years past?

A. Yes, sir.

Q. What effect, if any, has that grazing had upon the injury to trees?

A. Not any that I ever knew.

Q. Mr. Williams, are you familiar with the country between Mr. Light's place and the forest reserve in reference to trails?

A. Yes sir.

Q. Are there any well defined trails leading from Mr. Light's place, or the vicinity of Mr. Light's place, into the forest reserve?

A. Not any.

Q. What is the nature of the trails in that territory?

A. There is different trails running to water holes in different directions. A trail would lead maybe quarter of a mile toward the forest boundary, and then it ends—maybe switch off and go in another direction, and maybe take another trail that will go another quarter of a mile, maybe half, toward the forest reserve, and then that ends. There is no well defined trail from Sopris Creek to the forest reserve, or the Hay Park, as it is known.

345 Q. Are you familiar with Mr. Light's fences in the neighborhood of his ranch near his house?

A. Yes sir.

Q. Where is his meadow feed lot, or feed field?

A. West and north of his house.

Q. The west line of his meadow feed field,—is that the most westerly fence of Mr. Light's?

A. No, sir.

Q. Where is his westerly fence?

A. I would judge about a half a mile west, upon the mountain side.

Q. Do you know whether or not there are any gates or connections between his westerly pasture and his meadow pasture on the west side?

A. Yes, sir, there is a gate from his pasture to the range—or bars, rather.

Q. But in reference to the meadow lot, what gates or openings are there, if you remember?

A. He has two gates that I know of.

Q. Where are those two gates.

A. One of them would be south of his residence, and one west; one on the west side of Sopris Creek and one on the East side.

Q. The one that you speak of as being on the west side of Sopris Creek, is that up close to the house?

A. Why, about three or four hundred yards, I would say.

Q. From the house?

A. Yes, sir.

Q. The other your spoke of is down on the road?

A. Yes, close to the road.

Q. Leading to the northeast of the hill?

A. Well, no, the one I have reference to is on the south side of the house.

346 Q. But this is right close to the house?

A. Yes, close to Mr. Light's—to Mr. Finley's and Mr. Light's ranch.

Q. Do you remember the kind of fence that north and south enclosure fence is?

A. Of the meadow land?
Q. Yes.
A. Why it is a wire fence.
Q. That interior fence running north and south?
A. Yes sir.
Q. Is the country north and northwest of Mr. Light's ranch available for grazing at any other period than in the Spring.
A. Yes, sir.
Q. Through what period?
A. Almost any period. North, you say, of Mr. Light's ranch?
Q. Yes, north and northwest?
A. Almost any period there is cattle or horses on that range.

Cross-examination.

By Mr. KNAEBEL:

Q. How long did you say you had lived in that country?
A. Twenty years.
Q. Now this reservation was only created in what years?
A. Reservation?
Q. Forest Reserve?
A. We first paid our fees in 1907.
Q. Well, before the Reserve was created did you and your neighbors make any use of the high land that now lies within the reservation?
A. Yes, sir.
Q. Would you do that every year?
A. Yes sir.
347 Q. How many cattle would you say, on the average, were owned and grazed in that region before the reserve was created?
A. I would say on an average about two thousand head.
Q. About the same as there are now?
A. Yes, sir.
Q. You spoke of a very large range, Mr. Williams, extending from—I believe you said about sixteen miles toward Carbondale in one direction and twelve miles toward Aspen in another?
A. Yes, sir.
Q. And of a certain width, seven miles in width—no, I have forgotten the width.
A. Yes, about seven miles.
Q. Now you don't mean to testify that that is an absolutely open strip of those dimensions, do you?
A. Why there is ranches situated in between.
Q. How?
A. There is ranches situated in between.
Q. Mr. Light claims to use a range that he reaches by putting out his cattle on the northeast of his ranch. How much open range on the public domain would those cattle naturally range over if they were put out there? I am speaking of the public domain only.
A. Why, in the neighborhood of two thousand acres.

Q. Well, please describe that.

A. Well, from Mr. Light's east—well, let's see, how I will describe it. I don't believe I can describe it to you very well without a photograph or something of it.

Q. You understand I am speaking about a range that is not interfered with by fences?

A. Yes, sir.

348 Q. Or by any kind of country that cattle won't go over?

A. Yes, sir, they can go over it.

Q. Now you may describe it as well as you can,—the place.

A. Why it is just a mountainous country; there is nothing to stop them from going over it any more than——

Q. Is that the best answer you can give?

A. (Witness continuing.) —any more than any other country.

Q. Can't you describe it in reference to the rivers and towns?

A. There is no towns, no rivers, no fences; there is nothing to stop them.

Q. Now did you ever know of Mr. Light's cattle going up to Aspen, and in that direction?

A. Yes, sir.

Q. How many?

A. I wouldn't say; I have seen several bunches go past our house.

Q. How do they get up there?

A. They go up Snow Mass for—they can either go four miles of Snow Mass or they can go a mile and cross over and then strike the public domain,—a mountainous country.

Q. After they get to the public domain where do they go, if they keep on going?

A. They could go over to Leadville, I guess, if they wanted to.

Q. In what direction, I mean, toward the forest reserve?

A. In what direction toward the forest reserve?

Q. In what direction toward the forest reserve?

Q. Yes, with reference to the forest reserve?

A. Well, they wouldn't be within two or three miles of the forest reserve.

349 Q. As a matter of fact, haven't you known of cattle that were in that territory and got into the forest reserve?

A. Why I think so.

Q. And don't they usually do it?

A. No, sir, not always. Mr. Bersonsen ranges his cattle up there; he has about six hundred head. I don't know how many he took out a permit for, I guess Mr. French could tell you that. Last year he didn't take out any permit at all and he had over three hundred head; he ranged them on the public domain.

Q. What did you say the object was of your driving cattle up on the forest reserve, where the forest now is?

A. So that we could have the range for the fall and winter.

Q. You always feed your cattle during the winter, don't you, to a certain extent?

A. Yes, sir.

Q. Does Mr. Light do that?

A. Yes, sir.

Q. Does Mr. Light keep his fences up during the winter so that his cattle can go out upon the open range?

A. To a certain extent, yes.

Q. But not entirely?

A. No.

Q. Do you all depend, more or less, then, during the winter, upon the grasses of the range around the ranches there?

A. Not during the winter.

Q. Well, you leave your fences down during the winter don't you?

A. Why do we leave them down?

Q. Well, you answer that.

A. Because we don't put them up.

Q. Your cattle stray out upon the range during the winter at certain times, don't they?

A. At certain times.

350 Q. When there isn't too much snow on the ground?

A. Yes, sir.

Q. And if there is not too much snow on the ground they can graze on it during those times?

A. Yes, sir.

Q. Now please state again what the object is of driving your cattle, as you say you have done, upon the forest reserve?

A. I didn't mean to state that we exactly drove them on the forest reserve, as I understand where the line of the forest reserve is now; we drive them to the forest reserve line as near as we can know where it is, and very seldom at any portion of the range do we drive them beyond the forest line. There is what is known as the "beaver dams"; we take them beyond the forest line very often in the spring of the year,—not always.

Q. Do you know where the forest lines there are?

A. Yes, sir, I think I do; at least I see them posted up, and what the rangers has showed me where the line went through.

Q. Well, what do you drive them at all for? Go back to the time before there was any grazing fee, or any forest reservation; what did you drive them up into that country for?

A. Why, to get them off of the fall range.

Q. If this range is what you have testified, what was the object of taking your cattle away from it at all?

A. Which range?

Q. What is now the public land around these ranches?

A. Well, we take them very close to the ranches?

Q. Now please answer the question the way I put it; we don't get anywhere if you don't do that.

351 (Question read by stenographer.)

A. So as to have a fall range.

Q. You have testified on your direct-examination, referring, I believe, to the range in a general sense, that about two thousand head of cattle were pastured on it this last year. Now what proportion of those cattle made use of the forest reserve?

A. What portion of the cattle?
Q. Yes.
A. I would say about a third of them.
Q. Do you know?
A. Why no, there is no way of knowing.
Q. Or are you just guessing at it?
A. Guessing.
Q. Did you ever make any investigation concerning it?
A. Yes, sir. Not particularly to be testified or examined on.
Q. Do you mean that only one-third of all the cattle in that vicinity ever got up into, or used the forest range?
A. About one-third, yes.
Q. You have answered Mr. Ward that the range feeds all of these two thousand head of cattle, has fed them in the past and would support them now. What did you mean by "range"; what part of the land with reference to the public lands, and the forest reserve?
A. Why both of them.
Q. You included them both?
A. I included forest reserve and public domain.
Q. Then you don't mean to testify, Mr. Williams, that the vacant public domain around there would be good enough range for all of those cattle throughout the grazing season if they were confined to that?
352 A. For two thousand head?
Q. Yes, sir.
A. Yes I believe it would, if they wasn't disturbed.
Q. Would be good and they would fatten on it, would they, and make good beef?
A. Yes, sir, about the same as they do now; maybe not quite so well, but they would exist and grow.
Q. Did you see Mr. Light drive any of his cattle on the forest reserve this year?
A. No, sir.
Q. And yet you testified that if Mr. Light had new stock, stock new to that region and they appeared in the forest reserve they must have been driven there?
A. Not all of them; some will naturally drift toward the forest reserve, or any other direction, as far as that is concerned; strange cattle turned out in any new locality will drift in different directions, but most of them will drift from where they were ranged the year before, or previous years.
Q. What per cent of the people in that vicinity drove their cattle at all toward the forest this year?
A. I believe most of them.
Q. What is that?
A. Nearly all of them.
Q. Do you know that?
A. Yes.
Q. Do you know where they drove them; how near to the forest?
A. How near?
Q. Yes.

A. Our cattle, and the neighboring cattle in the Capital Creek district was driven within about a mile and a half of the line of the forest reserve—maybe two miles; the cattle on Sopris
353 Creek I don't know how far they were driven.

Q. Who else drove the cattle?

A. Mr. White, Mr. Hart, Mr. Cookman, and I believe that is all. We just got them all together and took them up.

Q. You said that the range north of Mr. Light's place was very good this spring.

A. Yes sir.

Q. What month do you refer to?

A. June, and portions of July.

Q. And that range is not by common consent, or otherwise, given up to Mr. Light, is it?

A. No, sir.

Q. Other people use that range besides him?

A. Yes, sir.

Q. Did you see Mr. Light turn out his cattle this year?

A. No, I did not.

Q. You said that he usually turned them out to the north?

A. Yes.

Q. And a few to the west? Is that correct?

A. Yes, sir.

Q. Has he done that every year that you know of?

A. Nearly every year; I don't remember seeing him turn them out, but I saw the cattle there.

Q. Every year?

A. Yes sir.

Q. That of course is at the time before the forest grazing is available?

A. Yes sir.

Q. Do you know how many cattle grazed on that area north and northwest and northeast of Mr. Light's this spring?

A. No, I don't; we bought Mr. Light's cattle and turned them out up Capital Creek and they crossed over toward the old range, and what per cent. of them I don't know, was in there.

354 Q. Well, whose else cattle were in there?

A. Mr. Finley turns his in there.

Q. Any one else?

A. Well, that is about all that particularly turns them in there.

Q. Mr. White's cattle in there?

A. Yes, his cattle were in there.

Q. Mr. Cookman's?

A. No, not as a rule.

Q. I am talking about this year, as a matter of fact.

A. Mr. White turned his cattle different this year than he did other years; he turned them east, or north of Mr. Light's ranch; they drifted up west of his ranch back to their own range between Capital Creek and Sopris Creek where ordinarily he would take them up Capital Creek and then they would go to their range between Capital Creek and Sopris Creek.

Q. Do you know Mr. Light's present brands?
A. Yes sir.
Q. What are they?
A. He calls it "Lazy T. Open A." I believe.
Q. Has he another brand too?
A. Well, Mr. Light—I believe that is his son's brand.
Q. Have you been up in the forest this year?
A. Yes sir.
Q. Did you see any of Mr. Light's cattle in the forest?
A. Very few.
Q. You were not up there looking for them, were you?
A. Not in particular, no.
Q. But you saw some?
A. Yes sir.
355 Q. Of those brands?
A. Yes sir.
Q. "U Slash U"?
A. Yes, sir.
Q. And the other brand, what did you say that was?
A. "Lazy T. Open A", I believe.
Q. Did you see some of those in the forest too?
A. Yes, sir.
Q. When you said that the range was well watered, what range did you refer to, now; with reference to the public lands alone, or the public lands including the forest?
A. Either is well watered.
Q. You know what I mean when I say "well watered"?
A. Yes, sir.
Q. I refer to the availability of the water for the stock.
A. Yes, sir.
Q. And for keeping fat on the stock, if they have got any.
A. Yes, sir.
Q. Now do you still adhere to your answer that the range outside of the forest is well watered throughout the year?
A. Throughout the grazing season, yes, sir.
Q. Take this Crown country; are you familiar with that?
A. Not so familiar as I am with our own country, that is further west.
Q. Do you feel that you are able to testify accurately as to how far stock would have to go for water in the Crown country?
A. I would not undertake to testify accurately to that; I never measured the distance.
Q. Don't misunderstand me when I use the word "accurately"; I mean a fair degree of accuracy, I don't mean to put it in
356 feet and inches?
A. Yes.
Q. Now how do you feel about that, Mr. Williams, in regard to the Crown country; do you think you know that well enough to testify about the water supply?
A. Yes, sir.
Q. Have you ever had any of your stock in that country outside of the forest?

A. Yes, sir.
Q. Throughout the summer?
A. Yes, sir.
Q. And did they all stay there throughout the summer?
A. Yes, sir.
Q. None of them went into the forest?
A. No, sir.
Q. Sure of that, are you?
A. I am positive of it.
Q. Did you keep them out of the forest?
A. No, sir.
Q. Well, when did they go off from there?
A. They would go to Sopris Creek, West Sopris Creek, and portions of Prince Creek.
Q. Do you mean to testify that all the cattle that are put in the Crown country, every one stays in the Crown country and don't get into the Reserve at all?
A. No, I wouldn't testify to that.
Q. What is the fact about that?
A. I am not familiar enough about that.
Q. Now in regard to the country that is west of Mr. Light's place; you said something about the feed being very good there. What time of the year did you refer to?
A. June, July and August, and the present time.
Q. All th-ough the grazing season?
A. Yes, sir.
Q. It is not over-grazed at all?
A. No, sir.
357 Q. Are you positive of that?
A. I am positive of that.
Q. So that you would be willing to leave your cattle there and let them graze there, and not make use of the forest at all?
A. This year, yes sir.
Q. Why do you pay the Government for the privilege of grazing your stock in the forest?
A. Well, we are sort of law-abiding citizens, for one thing, and we don't want to get into any trouble, and we never knew where the lines of the forest were until over two months ago. I have had various explanations of that, where they were, and I saw them marked out about two months ago on a book, as south of Light's, or west and south of Light's, and it takes in a very—leaves out the best part of our range.
Q. What do you mean by leaves it out?
A. Leaves it in the public domain; leaves the best part of our range in the public domain.
Q. All of the people up there except Mr. Light are permittees, aren't they?
A. Yes, I believe so; I am not positive about it.
Q. And they all object more or less to paying anything?
A. Yes.
Q. And yet you are confident that this range on the public land,

leaving the forest out of account, is perfectly satisfactory, and sufficient for the grazing of all of their cattle?

A. Yes.

Q. You said yourself awhile ago that the necessity of going a mile and a half for water was a bad thing for cattle that were being made beef of?

A. Yes, sir.

Q. How do you account for the fact, Mr. Williams, that
358 the stock that you drove toward the forest, but not into it, kept on going and went up there?

A. They didn't all go up there.

Q. Well, did any of them?

A. Yes, some of them did.

Q. I say how do you account for that fact?

A. Well, it is just the natural tendency of cattle to wander over different territory. If you put them out in an acre of clover they would want to move around, they wouldn't want to stay right in one patch.

Q. You spoke about the impossibility of complying with the provision upon the back of the application, I believe it was, for a permit. Will you please point out what is difficult to comply with in these provisions?

A. I don't believe there is anything difficult to comply with.

Q. What was it that you said would be difficult to comply with?

A. I didn't say there was anything, did I?

Q. Didn't you testify that it would be difficult for cattle men to comply with some regulations or other?

A. Yes, in regard to herding,—riding over the line of the forest reserve and the public domain.

Q. Now just specify a little bit more clearly what you mean, and all that you mean in that connection.

A. In regard to keeping cattle away from a certain line, cattle will naturally go up to certain places, and if you are there to herd them back, you have got to keep driving them back all the time, and they will keep going to that certain place, trying to get over into certain places where they have been used to go freely,
359 and you have got to move them clear out of there.

Q. Well, you are speaking now about the difficulty of keeping cattle off of the forest, aren't you?

A. Yes, in herding them.

Q. Herding them away from the forest?

A. And injurious to the cattle.

Q. Is there any demand that has ever been made on you, or anybody else in any of these regulations that you find unreasonable?

A. No, not when you take out a permit, but in regard to herding that portion there; that is, if we were asked to herd them over there, I believe it is.

Q. But you never have been asked, have you?

A. No, why should we be asked; we have always taken out a permit.

Q. So that your idea about this being unreasonable is that of a man in the standpoint of Mr. Light, for instance, who has not taken out a permit?

A. Yes, if he were asked to keep them off the reserve.

Q. That is all you find unreasonable in the situation, isn't it, in the Regulation?

A. Well, I don't know,—you don't—any person taking out a permit, as I understand it, there, wouldn't have to do any herding?

Q. You say there are no trails near Mr. Light's place, do you?

A. No permanent trails.

Q. (Question read.)

A. There is trails, yes.

Q. Describe them.

A. There is a trail running east and west quarter of a mile to no particular point, to water holes, say. One running north and south——

360 Q. Wait a moment. Where is the water hole?

A. At one end or the other of this trail.

Q. Well, can you give us some idea with reference to the forest reserve?

A. And leading toward the forest reserve. There is no defined trail leading toward the forest reserve from the west side of Mr. Light's.

Q. Does that trail you refer to, start from the north end or southwest corner of Mr. Light's ranch?

A. There is a trail starting from the southwest corner of Mr. Light's ranch leading west about half a mile, and it just stops; then there is another one starting from the same point; it is a portion of an old road,—old wagon road leading maybe a mile south, and runs into one of the ranches—it is an old road; and then there are other trails, small trails, leading most any direction, but there is no well defined trail leading to the forest reserve.

Q. The trail that you refer to as running from the southwest of the ranch connects with other trails, doesn't it?

A. No, sir.

Q. Do you know a place where there is an old road that leads into the reserve?

A. Old road?

Q. Old road.

A. There is a road north or south of Mr. Shuttleworth's, and probably another place,—what is known as the "Hay Park" road leading clear through, from off the public domain on to the reserve, but not from Mr. Light's.

Q. You mean the road itself does not go to Mr. Light's?

A. No, sir.

361 Q. Have you ever seen cattle on that road using it?

A. They use it very little; it is a straight, hard road, cattle don't usually go that way.

Q. How do they get into Hay Park?

A. There is various ways of them going; they can leave from the

west side of Mr. Light's, and go south, and go southwest,—that is, the cattle turned out on Sopris Creek; the cattle from Capital Creek can go due west, or nearly so, to Hay Park.

Redirect examination.

By Mr. WARD:

Q. When do cattle follow trails?

A. Going to water, and in the fall of the year coming from their summer range, and,—well, that is about all they particularly follow trails; they usually feed from the water holes—they scatter, they don't particularly follow trails, but when cattle are coming to water then they follow trails, as a rule, and of course in the fall of the year they follow trails, to a certain extent, leaving the summer range, but not so much as they do going to water, or coming from water.

Q. You made some statement about there being two thousand acres in the range north of Mr. Light. What did you mean by that?

A. North?

Q. Yes.

A. No, I mean it was east of Mr. Light's, clear out of Mr. Light's range. "East of Snow Mass" was the question, the way I understood it, over near the Brush Creek and Wildcat country.

Q. You said in cross-examination that most of the neigh-
362 bors during the past year drove their cattle to within the neighborhood of the forest reserve?

A. Yes, sir.

Q. Mr. Williams, out of one hundred and seventy-five head of cattle turned out north of Mr. Light's ranch early in the month of April, what proportion would you expect to find upon the forest reserve along in the summer time after the range had become good upon the high hills?

A. Well, that depends, Mr. Ward, upon the kind of cattle; that is, in regard to whether they were there the year before or previous years, or whether they had ever been on the range or not.

Q. Take the cattle that had been bought from a different locality,—the Stauffacher cattle.

A. Well, I would say they wouldn't be over twenty-five per cent. would drift toward the forest reserve of that particular bunch that had never been there.

Q. What is the result of a number of head of cattle being driven through the territory where Mr. Light's cattle are?

A. What would be the results?

Q. Yes, as to disturbing Mr. Light's cattle?

A. Why they would probably fall in with the bunch and go on.

Q. What time of the year do cattle put on fat in that locality?

A. Usually from about,—anywhere from the first of September until about the middle of October.

Q. When do they leave, ordinarily, the high range?

A. About the first of October.

363 Q. Where is the grass found that puts on most of the fat?

A. We usually get that,—well——

Q. As to the forest reserve.

A. It would be nearly equal if we could hold the cattle high in the fall of the year. It is usually when the grass begins to dry and harden that the cattle puts on most of the fat.

Q. Do you know whether or not Mr. Light in any way caused his cattle to go upon the forest reserve in 1908?

A. I do not know.

Q. Do you know whether he did so during 1907?

A. I told Mr. Light in the spring of 1907 that I would help him take his cattle up on the range——

Mr. KNAEBEL: Now wait a minute. You are about to testify concerning that same conversation with Mr. Light in which he made some statement to you.

WITNESS: No, sir, he did not.

Mr. KNAEBEL: In any event I object to this question as calling for hearsay, and for transactions which are incompetent, on the ground—to use the expression, in re inter alias acta.

WITNESS: What I was going to answer was nothing leading; only he asked me if I knew of Mr. Light driving any cattle up there——

Mr. KNAEBEL: You have already answered that.

Q. Answer the question.

A. If I knew of him driving cattle up there——

Q. (Question read by stenographer.)

364 A. (Witness continuing:) —and he told me that he didn't have time, or something like that. He didn't say that he would help me or that he wouldn't help me.

Q. Well, did he to your knowledge do anything to—what did he do, to your knowledge, with reference to causing his cattle to go upon the range in 1907?

A. Not any; the cattle dri-ted past our place and on up toward Aspen during 1907, and I telephoned Mr. Light that his cattle were going there, but he didn't apparently seem to want to stop them. It was none of *by* business.

Q. There was an open, unreserved public land, open unfenced land, outside of the forest range in the direction of Aspen?

A. Yes sir.

Recross-examination.

By Mr. KNAEBEL:

Q. Was that the whole five hundred head that went up to Aspen that year.

A. Oh, I wouldn't say how many, but I don't think there were that many; I am almost positive there were not that many, though I wouldn't say, they may have went during the night or day; I don't know whether there were that many.

Q. Did you see them?

A. I seen a good many of them,—three or four different bunches.
Q. How many did you see?
A. I expect I seen twenty-five in a bunch.
Q. That is all?
A. In one bunch, and then there would be a few more straggling along as cattle drift.
Q. How many did you see all told?
A. I didn't count them and I can not say how many I
365 seen. Mr. Light told me that he got over one hundred or one hundred and fifty, and it might have been two hundred and might have been three hundred, or might not have been a hundred that I seen.
Q. You don't know what became of them afterward?
A. After they went past our place, yes; I seen them on the public domain east of Snow Mass, between what is known as "Brush Creek" and Snow Mass, and where Light got them I don't know; whether he got them on the forest reserve or on the public domain I don't know.

(Recess until 1 o'clock P. M.)

MARCUS LAFAYETTE SHIPPIE, being duly sworn, testified as follows:

Direct examination.

By Mr. WARD:

Q. What is your name?
A. Marcus Lafayette Shippie.
Q. Where do you live?
A. I live about half a mile due north from Emma,—due South, I would have said.
Q. How far is that from Mr. Light's house?
A. It is about four miles.
Q. On what creek do you live?
A. I live on Sopris Creek.
Q. What is your occupation, Mr. Shippie?
A. I am a ranchman and cattle dealer,—cattle man.
Q. How much of a farm have you?
A. One hundred and sixty acres.
Q. What do you raise on your farm?
A. I raise hay, grain and spuds.
Q. And how many cattle have you been running of late years?
A. I have from one hundred to two hundred head.
366 Q. How long have you lived in this vicinity?
A. I have lived here twenty-six years.
Q. How long have you been occupied in your present business on your own account?
A. Twenty-six years I have been in the cattle business and ranching.
Q. How long have you been familiar with the cattle range in the Roaring Fork Valley?

A. Since 1882.

Q. And how long have you made a business of handling cattle in that range?

A. Since 1882.

Q. How far does the range extend from the Williams Brothers' ranch, the range in the vicinity of Mr. Light's ranch; how far does that extend in the direction of Carbondale along the Roaring Fork Valley; how many miles is it?

A. In the direction of Carbondale is Mr. Williams' and Mr. Light's ranch?

Q. Mr. Williams' ranch, yes.

A. I should judge the nearest you could get to it the way the crow flies I would think it is ten miles.

Q. And about how much unenclosed land is there for cattle to run upon, I mean; what width of unenclosed land is there for cattle to run upon in that country?

A. Well, there is now and then a ranch that is located in basins like in there is all. Well, you can go right straight through there. Please ask that question again.

Q. About how wide is that range?

A. Well, that is the width of it, and there is two or three ranches mixed up in there, straight across on the range.

367 Q. How many miles in the range, about,—approximately?

A. About ten miles is the width.

Q. And the length?

A. And the length,—now the length, which way do you mean?

Q. From Mr. Williams' ranch to the Roaring Fork, or Carbondale.

A. I just stated it was about ten miles from Williams' ranch to Carbondale.

Q. Well, now from the Roaring Fork up to the forest reserve about how far or wide is it?

A. As near as I can find out where the forest reserve line is it must be in the neighborhood of five miles, or between four and five miles, as near as I could judge.

Q. How much of that territory is fenced up?

A. Well, there is about half a mile from the Roaring Fork river; yes, it is about three-quarters of a mile.

Q. Is there any unfenced open land southeast of Williams Brothers' ranch?

A. Southeast.

Q. In the direction of Aspen?

A. Oh yes, sir,—yes, sir, lots of it.

Q. Is there any unfenced open, unreserved public land beyond Carbondale to the northwest?

A. Northwest, yes, sir,—lots of it.

Q. Is it customary for the ranchers to fence all of that patented land?

A. Fence all the patented land?

Q. Yes.

A. Well, some of it is, and some it is not; some will fence off

a part of the range and some of the ranchers will just fence off ground that they are cultivating so far.

Q. Have you been over the range from the Williams
368 Brothers' ranch down to the Crown country during the year 1908?

A. Yes, sir, very frequently.

Q. Are you familiar with the condition of that range as it has been this past summer of 1908?

A. Yes, sir.

Q. What is the character of the range as refers to food for cattle during 1908?

A. Plenty of food.

Q. What was the condition, in say,—in May 1908?

A. May 1908, plenty of food; that is early you know; that is their earliest range, that is the first part of their range, though, and there was plenty of food there in May.

Q. Are you familiar with the territory north and northeast of Mr. Light's ranch, bounded on the east by Snow Mass, on the north by Roaring Fork, and on the west by Sopris?

A. Yes, sir, very.

Q. Did you see that portion of the country in the spring of this year?

A. Yes, sir, I seen it several times this year.

Q. During the times you have seen it this year what did you find the condition of the grass?

A. I found abundant grass.

Q. What evidence, if any, of overgrazing did you find?

A. Oh, there is an abundance of grass, there is no overgrazing there.

Q. What evidence, if any, as to overstocking the range?

A. There is no evidence whatever.

Q. How recently have you seen that grass?

A. How recently?

Q. Yes.

A. I saw it not over ten days ago.

Q. What is the condition of the water available from that territory?

369 A. Well, if they get right on the main divide I don't think that you could point a compass any place on that divide that a cow would have to go over a mile, or I don't think—yes, just about a mile.

Q. What, as a stockman, would you say the condition of the range is as to water—that range, as to water?

A. Well, I consider that a cow can very reasonably go a mile to water.

Q. Would you consider it good or bad?

A. I would consider it good, yes, sir; the Roaring Fork on one side, the Roaring Fork on the east, and the Sopris Creek on the west, and when they are on the divide, right direct on the divide there, about half way between,—it is about a mile if they should happen to be right square on the divide.

Q. What effect, if any, would going the distance the cattle must from that particular territory have upon the cattle going for water?

A. Why I don't consider it has very much effect on them; of course it might be a little better if they should happen to be grazing to water, but I don't consider a mile is any distance for a cow to travel to water.

Q. What is the character of feed upon that special range?

A. Very good.

Q. What is the character of it?

A. Mostly blue-stem and bunch grass.

Q. What kind of feed is that considered by the stock men in this country?

A. Well, it is considered the very best.

Q. Is that available throughout the year,—grazing season?

370 A. Yes sir.

Q. What portion of the grazing season is that grass best, if there is any portion?

A. Well, I consider it the best when it matures in the fall; it is really better then; still at any time of the year that a cow can reach blue-stem grass it is all right.

Q. How is the present condition of that especial range compared with it five or six years ago?

A. Oh, it is fully as good.

Q. Are you familiar with the country northwest and west of the range you have just described?

A. Yes, sir.

Q. Are you familiar with the Crown country?

A. Yes, sir.

Q. What is the character of the Crown country in the year 1908 in reference to abundance or lack of feed?

A. Well, it is good grazing there, plenty of feed there; everything is rolling fat, that is, everything that should be fat; there is cows that has been sucking calves all summer is in just as good condition, and everything that should be beef steers and barren cows is good and fat.

Q. What is the condition of that range in regard to whether or not it has been overgrazed or overstocked?

A. No, it has not been overstocked.

Q. The present year?

A. No, sir.

Q. Did you notice that range during the year 1907?

A. Yes, sir, I ride that range every year.

Q. In what condition was the grass during 1907?

A. It was in good shape; it was in good condition.

Q. During what portion of the season, grazing season?

A. It was in all the grazing season; I never seen it very

371 very close in the ground.

Q. What was the condition of the range north and northeast of Mr. Light's during 1907?

A. North and northeast?

Q. The one we have just described along the hills?

A. Why it was in good shape; there is grass there the year

around; that is if a cow could get to it the cow could winter there, but the snow covers it, of course.

Q. How was the grass on that range during 1907 as compared with the present year?

A. About the same,—about the same condition.

Q. And how is it as compared with past years, five or six or seven years ago?

A. I don't consider there has been any material change on that range for the last five or six or seven years.

Q. How is the water in regard to accessibility throughout this range?

A. Now what range is that you mean?

Q. Beginning with the Williams ranch, running down throughout the Crown country?

A. Throughout the Crown?

Q. Yes.

A. Why there is water there in the Crown. There are three springs in the Crown, and there are two lakes, what we call the upper lake and the lower lake; and there is three natural springs there, and there is two of them that I never knew to go dry.

Q. How is that considered by cattle men, as to its being watered, good or bad?

A. Why I consider it very well watered.

Q. The creeks that run through this territory, Sopris Creek and West Sopris, how are their banks as to cattle getting up and down them?

372 A. Why the banks is all right, a cow can go down nearly every place; of course a cow has a particular place, generally, to go, they will have their trail, and maybe they will go a quarter of a mile if they are within twenty feet of water; a bunch of cows will start on the dead run for water and strike a certain trail and go to their certain watering places even if they are within fifty feet of the creek, though they can go into the creek nearly everywhere they want to wander.

Q. Are you familiar with the country west of Mr. Light's place, between that and the forest reserve?

A. West of Mr. Light's place, between Mr. Light's place and the forest?

Q. Yes.

A. Yes, sir.

Q. What is the character of the feed there during the present year?

A. It is very good.

Q. You have seen it the present year?

A. Yes, sir, I seen it about a month ago.

Q. What evidences, if any, are there of its having been overgrazed or overstocked this year?

A. It don't look to me that way.

Q. How about last year?

A. It wasn't overgrazed; it has not been overgrazed there so far as I know for four or five years.

Q. How about water in that territory; is it difficult or otherwise for cattle to get to water?

A. West of Mr. Light's ranch—now let me see—water is all right, they can go down there to the Finley ditch and drink.

Q. Are there any other places beside the Finley ditch where they can get water?

A. I was just thinking if there were. No, I don't think
373 that there is.

Q. Is it a fact that in the early spring of 1908 the grass on the range in the immediate vicinity of Mr. Light's place was all eaten off?

A. 1908?

Q. Yes, sir.

A. In the immediate vicinity?

Q. Within two or three miles.

A. Oh, no sir, that is not a fact.

Q. Is it a fact that it is not now eaten off?

A. No, sir, it is not.

Q. Have you an approximate idea of the number of cattle that have run upon the territory from the Williams ranch to Carbondale during the past season?

A. Now what do you mean? Do you mean cattle that is turned loose, or the cattle that is run on the territory regardless of the reserve and all?

Q. Yes.

A. Well, now, my best estimation would be between twenty-five hundred and three thousand head. Of course that is just a rough estimate.

Q. In your opinion as a cow man does that number of cattle overstock this territory or not?

A. I don't think it does, no, sir.

Mr. KNAEBEL: The question is objected to as not sufficiently defining the territory intended, and the answer is moved to be stricken out.

Q. Do you understand the territory — had reference to?

A. I understand the territory. You mean the territory outside of the reserve, do you not?

Q. Yes, sir.

374 A. Well, I consider that the territory outside of the reserve would amply support that many cattle.

Q. If the forest reserve southwest of Fred Light's ranch were fenced with a lawful fence under Colorado law, how many cattle could be supported in the territory on unreserved land?

A. Do you confine yourself to the southwest of Fred Light's ranch?

Q. No, that is, if the forest reserve was fenced, how many cattle could run from Williams ranch down to Carbondale——

Mr. KNAEBEL: How many cattle could run from Williams ranch down to Carbondale?

Q. Could be supported there during the grazing season?

A. Well, I believe between twenty-five hundred and three thousand head of cattle.

Q. How far will Mr. Light's cattle graze when turned out in April northeast of his ranch, before the season is over?

A. How far will they graze?

Q. Yes.

A. That is an awful hard question to answer; though my cattle sometimes goes ten miles, sometimes fifteen miles. That is an awful hard question to answer.

Q. Is the Crown country inaccessible to Mr. Light's cattle?

A. No, sir, it is not inaccessible to any man's cattle if he turns them loose.

Q. Is the fact that the Crown country is five or six miles away from Mr. Light,—does that fact prevent them from going there?

375 A. No, sir.

Q. May Mr. Light's cattle without damage to themselves, go as far as Prince Creek and Thomas Creek during the grazing season?

A. Yes, lots of them; I have driven herds of them from Prince Creek.

Q. So what would you consider would be the ordinary range of Light's cattle.

Mr. KNAEBEL: Objected to as indefinite, as not defining whether it is intended to call for knowledge of the witness as to where Mr. Light's cattle actually go, or the range that they might go upon, or the range that they are entitled to go upon.

Q. I will modify the question by saying, or adding to that—the ordinary range of Mr. Light's cattle prior to the establishment of the forest reserve?

Mr. KNAEBEL: Same objection to the modified question.

A. An ordinary range prior to the forest reserve is very—I consider from Prince Creek to within three miles of Aspen, I would judge that they would run; there is nothing to hinder them running up there; I know I found my cattle that far, and I am four miles this side of him.

Q. What per cent of the cattle would naturally go upon the forest reserve during the grazing season?

A. Well, from a third to one-half; that is if they was left to go loose unmolested.

Q. What has been the custom of the cattle men under the
376 present regulations of the Forestry Department as to handling their cattle during the *bast* two seasons; those that have permits?

A. As far as I am concerned, and others that I know anything about, why I turn my cattle about three-quarters of a mile above my ranch and fly them to the high winds and let them go which ever way they want to go, and just see that they don't come down and bother me on the range. I get a permit for what cattle—or

more that I consider so as to be dead safe, that will drift on to the forest reserve, and then sometimes I go up *on* June or July, maybe the first of August, and brand up my calves, and see no more of them until I ride for beef. I go around there every little while and ride for beef and veal calves, and the like of that.

Q. Do you know of any of your neighbors or cattle men in the vicinity ever driving the cattle upon the forest reserve?

A. No, sir.

Q. Those that haven't permits?

A. No, sir.

Q. Do you know anything about the custom of putting salt on the forest reserve?

A. Yes, I know about it; I put salt up on the forest reserve for the last twenty-five years; that is not on the reserve exactly, but up on the range where the cattle run.

Q. What is the object of putting salt up there?

A. Why because it makes our cattle do better, and it holds them up there; if you put it up there and keep them there in the fall it holds them up off our ranges and saves our later feed.

Q. Have you had any experience in keeping your cattle up on the high range?

A. Yes, sir, more especially in the fall.

377 Q. What effect would the fact that salt has been placed upon the forest reserve have on tolling Mr. Light's cattle up there?

A. Oh, it would have great effect; the cattle will naturally stay where there is salt, and they will drift where there is salt; if a cow finds salt and another has not found it, as a general thing it will toll another one to it until they all find that chunk of salt and it will hold them up there.

Q. What is the number of cattle that run upon that range, including the forest reserve now, as compared with six or eight years ago?

A. I don't think there is as many quite as there were six or eight years ago.

Q. Do you know any reason why there would be any less cattle?

A. No, I do not; only men have gone out of the cattle business that was there before. I know of one man that used to have fourteen hundred head of cattle there, just one individual man.

Q. Is there any difference in the condition of the grazing feature now than then?

A. Well, I don't know whether there is so very much; I think it is a little better now than it was at that time.

Q. In which, in the water? Is there any change in the water whatever?

A. No, sir.

Q. Do Mr. Light's cattle mix with the other cattle upon this lower range?

A. Yes, sir.

Q. Does the fact that they do mix with them have any tendency to cause them to drift and go upon the forest reserve?

A. Now I don't just exactly understand that question.

378 Q. Does the fact that Mr. Light's cattle mix with herds that have permits to go upon the forest reserve, have any tendency to take his cattle up there?

A. Well, I don't know as they really have; they would go on to the range with other cattle. A cow don't know whether she has got a permit to go on to the range or not. But their cattle, of course would go with the others.

Q. If cattle should be driven, under the direction of the forest department, or otherwise, from these lower ranges up into the higher ranges, would *they* be any tendency of Mr. Light's cattle being driven or taken along with them?

Mr. KNAEBEL: I move to strike out the question and answer to it, upon the ground that they are not founded upon any evidence or contention in the case, and are incompetent and immaterial.

A. Yes, sir.

Q. Why will Mr. Light's cattle leave the lower range as the summer comes on?

A. How is that?

Q. Why will Mr. Light's cattle leave the lower range when the summer comes on; why will they leave it then?

A. Why will they leave it then?

Q. Yes.

A. It is natural for a cow to drift a little higher as the feed gets dry below, and rustle tender feed.

Q. Is the fact that feed is on the lower range maturing on the ground—does that fact make your feed any poorer?

A. Maturing on the ground?

Q. Yes.

A. No, sir.

379 Q. But I understand you to say that the cattle would prefer the fresh grass?

A. A cow might choose something that would not really put on as much fat as something else; they rustle tender feed as the green grass comes up, at the same time the tough grass as it ripens, as they come down, will put on more fat than this fresh grass that is so sloppy.

Q. Would the fact that an animal leaves a certain territory—is that any proof that there is no feed there?

A. No, sir, no, sir.

Q. Do you know anything about Mr. Light's habit of turning his cattle out in the early spring.

A. Well, no, I never was there, I don't think, in my life when he turned them out.

Q. Have you noticed his cattle in the early spring?

A. Yes, sir. I have noticed them. I didn't notice them last year, 1908, but 1907 I noticed he had turned them all out on to this northeast hill.

Q. About what time was that?

A. Well, it was very early; it was in right good season he turned

them out there, and I saw some of them up there and I asked him why he turned them up there and he said it was because the snow had gone off and there was better feed there than any place else, and he said that he would turn them up there and let them go where they was a mind to.

Q. What is the habit in this range country of cattle men, in handling their cattle?

A. What is the habit?

Q. Yes, do they turn them out, or do they herd them?

A. They turn them out in the spring just as soon as the grass gets in shape so that a cow can exist, and let them go; he
380 rides among them now and then a little while and goes out and rustles calves, veal calves and beef whenever he looks after them awhile.

Q. What would be the effect upon the cattle business were the cattle men required to herd their cattle in this territory.

Mr. KNAEBEL: Objected to as incompetent, irrelevant and immaterial.

A. It would drive them out of the cattle business.

Mr. KNAEBEL: I move to have the answer stricken out.

Q. It was testified, Mr. Shippie, that you refused to put the salt where the rangers directed you?

A. It was?

Q. Yes, is that true?

A. I believe it was.

Q. Why?

A. Because the rangers directed me to put salt where there was none of my cattle; my cattle was down in another direction and I put the salt where my cattle was.

Q. Where did you put your salt?

A. Right up at the—what we call the "Dry Lakes" about three quarters of a mile due north from what we call the "Nutting cabin".

Q. What effect, if any, had the conduct of Mr. Light upon your action in this matter?

A. None whatever.

Q. Have you taken out a permit?

A. Yes, sir.

Q. Why?

A. I took out a permit because I was a law-abiding citizen and I just wanted to keep out of trouble, if there was any show for trouble.

Q. Do you consider that you got any returns for the permit you took out?

A. Nothing whatever so far.

381 Q. What is generally considered by the cattle men of your locality as Fred Light's range?

A. As Fred Light's range?

Q. Yes.

A. Now I don't understand the meaning of that question.

Q. Where do Fred Light's cattle run?
A. Mr. Fred Light's cattle runs from Prince Creek to Aspen.

Cross-examination.

By Mr. KNAEBEL:

Q. Mr. Shippie, what do you mean by Mr. Light's cattle running from Prince Creek to Aspen?

A. I mean to say, sir, that when he turns his cattle out in the spring, and when he gathers them up in the fall, they are found all the way from Prince Creek to Aspen, when he gathers them in the fall; that is what I mean to say.

Q. And that none are found on the forest reserve?

A. Oh no, sir, I don't mean to say that, I don't mean to say that; I mean to say that that is the territory they take in, from Prince Creek to Aspen, and of course that might take in some of the forest reserve, and that was the range where his cattle is.

Q. You don't mean that a great many of his cattle go to Aspen or near there?

A. Why no, I don't mean to say that a very great many of them go to Aspen; there has been some found in Aspen and some of them——

Q. Just a few have straggled there?

A. Yes, sir, I didn't mean to say a body of his cattle goes to Aspen; there is a great many goes to Prince Creek and in the Crown country.

Q. Were any of your cattle on the reserve this summer?

A. Yes sir.

382 Q. How many head had you this summer?

A. Have I?

Q. This last summer.

A. Two hundred head; somewheres about two hundred head.

Q. Were those cattle all new to the country?

A. No, sir, there were about one hundred head of them new.

Q. You brought in one hundred head of new cattle?

A. Yes, sir.

Q. Where from?

A. I brought them in from Denver; they were shipped here from Texas.

Q. Do you not think the cattle would all be better off if they didn't any of them go within the forest reserve?

A. No, sir, I don't say that they would be better off, no, no; of course that would confine them to a little closer quarters than they are now, that would confine them in closer quarters than they are now, that part of them in the reserve. I don't consider they would be better off.

Q. You don't think you and your neighbors would be benefited if they should fence in this forest reserve and not give any permits for grazing inside of the fences, and cut out all of that range that you have used more or less for so many years?

A. Well, as far as I am concerned I would just as soon they would; if they would fence it so as to give me no trouble I would just as

soon they would fence it; of course if they would force me for to ride the land and keep my cattle off there, that would drive me out of the business. I couldn't do that, or be sued for fraud, but if they would fence that off and save me the trouble of paying
383 for it and that monkey business, I would just as soon they would.

Q. You think that that would be generally to the benefit of the community up there, that there should be no grazing, that a fence should be erected, and there should be no grazing within the forest limits?

A. I can not say as it would be a benefit, although I can not say as it would be a detriment.

Q. Now is there a surplus of feed throughout the grazing season upon this range about Mr. Light's place?

A. A surplus?

Q. Yes, not including, mind you, any of the forest reserve.

A. Well, yes, I consider that there is about two miles by four or five, that there is a surplus of feed; there is lots of feed, that is, northeast of Fred Light's fields,—ranch,—two miles by four.

Q. You think that aff of the cattle you have testified about—twenty-five hundred to three thousand head, could be grazed throughout the grazing season on that range that you have referred to?

A. Not on that range, no, sir, no, sir, beg pardon, but the whole range that is outside of the forest reserve, now, mind you, outside of the forest reserve, takes in an immense territory of this Crown range, and of the range this side of, east of Crystal river up above Fate Girdner's.

Q. You couldn't use that range, though, for the whole season——

A. Why certainly we——

Q. One moment, I had not finished,—without herding the cattle unless the reservation was fenced?

384 A. No, sir, because we could not keep our cattle from straying on to the reserve.

Q. Your cattle like the tender grass?

A. Cattle like the tender grass, that is very true and even if that grass wasn't tender they would stray there anyhow.

Q. What do you now think, Mr. Shippie, is the effect upon the movements of cattle, the fact that the grass is more tender on the reserve than down below, as the season advances?

A. It is natural for cattle for to drift up as the grass gets greener; and as the grass gets ripe below, and the grass grows green above, there is as much animal disposition about a cow as there is a deer,—they will follow the snow; notwithstanding it might not be so good for them they will go up naturally, to a certain extent.

Q. Well, then do you think that the use of the forest region, the high country there, by the cattle,—is it a positive injury to the cattle industry?

A. No, sir, not unless they go up there and get some of that poison weed; lots of them go up *up* and gets some poisen weed and it kills lots of them.

Q. But, you don't think it does them good?

A. Yes, certainly I do; I think it does them good to get up there, and they shed quick, they get on some meat, and they leave our lower country, and they put on a good deal of beef up there, and come back down in the lower country, and we have lots of grass and it ripens up the beef and we have fine beef. If you kill a cow and take the beef right off in the upper country you will
385 not get nearly as nice beef as you have off of grass that is ripened, and the ripened grass ripens the beef; a beef cow has to be ripened the same as an apple.

Q. What are the water conditions up on the reservation?

A. Fine.

Q. They don't have to move far for water up there, do they?

A. No, sir, that is, in parts of it.

Q. Where they can go, they can go and get water next to their feed, can't they?

A. You bet they can go any place there and fill themselves, and lay down right there, and drink water; and they can off of the reservation, too.

Q. Well, when they do that off the reservation they have to go further to get something to eat after they have taken a drink?

A. Not in all directions they don't.

Q. Take this region we have been talking about lying generally to the northeast of Mr. Light's place.

A. Well, they would naturally have to go all the way from twenty feet to a mile for water there,—the furthest part I don't think that you could stick a stake that they would have to go over a mile in that country right on the divide.

Q. On the average, about what time of the year do you turn them out, you and your neighbors, including Mr. Light?

A. We turn out in the spring of the year; it varies all the way from the middle of April up to the 20th of May,—sometimes we go as late as the 20th of May.

Q. You feed as late as that, do you not?

A. Yes, sir, sometimes we do, not frequently though. The
386 1st of May—we usually have our cattle out on the range by the 1st of May.

Q. What do you wait so long for, is it because the snow covers the ground?

A. The snow is on the ground and the grass has not started.

Q. Does much of that grass that has been cured in the fall on the range remain over the winter so that it is useful in the spring?

A. Very useful if it is there and hasn't been eaten.

Q. You are begging the question now. I said, does much of it remain over the winter?

A. Oh, well no, not so very much; some of it does.

Q. But really you have to rely—as I understand the testimony you have to rely on the grass that shoots up?

A. No, sir, I turn my cattle out very often before I can see a sprout of green grass.

Q. Well, take it generally; I am not talking about the exceptional cases now, but the general proposition is that the spring grazing is on the new grass, isn't it?

A. I scarcely ever wait until there is new grass comes up for my cattle until I turn out.

Q. What do you do; leave your fences open?

A. Open the fences and drive the cattle on to the range.

Q. What about the general custom?

A. That is the general custom in my neighborhood.

Q. I want to call your attention to your previous testimony?

A. Yes, sir.

387 Q. Would the people up there turn out their cattle as soon as the grass sprouts up in the spring?

A. Well, it sprouts up a little and comes out on some old grass just a little, it doesn't matter if it isn't up high enough for them to live on it; there is some old grass for them to live on.

Q. How long do they remain there usually in the spring after you turn them out in the lower country before the grass begins to get in the condition which you say is cured grass, which is better for cattle, but not so much to their taste?

A. Well, sir, they gradually leave the country that we turn them on maybe, say, a part of them in a week or ten days and part of them will stay on maybe for three months; but they gradually drift up, as the summer and spring opens up, and the summer comes around they drift up to higher country.

Q. The heat gets pretty intense down below there, doesn't it?

A. No, sir, not so very hot.

Q. Doesn't the ground dry up a great deal?

A. Oh yes, the ground gets pretty dry.

Q. You couldn't raise crops on it to any extent without irrigation, could you?

A. No, sir.

Q. And then they would have to go also a considerable distance for water away from the kind of grass that they like best, if they stay down below?

A. No, there is no place there, understand me, that they have to go any distance for water on our range—there is no place, I don't know—from eight or ten miles one way and twenty miles

388 the other—no not twenty miles, we will moderate that down to twelve, where it would be one mile from our ranches; I don't know where I could get in the vicinity of our cattle ranches that——

Q. Now just bear in mind what I am getting at is not what a cow could do without injuring itself, but what a cow would do without being compelled to do. Now would a cow willingly go that far for water, a mile, if it could find water nearer?

A. No, sir, not if they knew where it was I don't think.

Q. Do you know of instances, Mr. Shippie, where cattle have been turned out on the northeast of Mr. Light's place and gone over that ridge that lies to the east into the Roaring Fork and watered there?

A. No, sir, I can not cite no instance.

Q. Well, how does it come that that does not occur?

A. How does it come that that does not occur?

Q. Yes, how does it come that that does not occur?

A. I don't know but it does occur.

Q. Well, isn't it a fact, Mr. Shippie, that that becomes a pretty high ridge in there, and is steep on the east side?

A. It is steep, but it is very accessible.

Q. And isn't it a fact that the Roaring Fork is fenced on the other side of that ridge?

A. Yes that is a fact, and it is a fact also that there is a Four Mile ditch runs along there all summer, right above the fence.

Q. And it is always full?

A. Flows plenty of water for cows,—a bunch of them.

389 Q. You don't mean to say it is a flowing ditch all through the summer?

A. I do mean that it is a flowing ditch all the summer.

Q. Sufficient to water stock?

A. Sufficient to water one hundred and sixty acres of ground.

Q. Always flowing?

A. I don't know whenever it has been shut off unless it was broken. I used to be interested in that ditch myself.

Q. Are you very familiar with the Crown country?

A. Yes, sir, very; I have rode it practically twenty-five years—killed lots of game in there.

Q. Been there all times of the year?

A. Yes, sir, all times of the year,—no sir, I will take that back, in the dead of winter I hardly ever go there because the snow gets so deep you can not get in.

Q. Describe the two lakes you spoke of.

A. Those lakes is formed by springs: there is one lake has been dammed up, but the dam is broken out, and there is a ditch that the water from the spring has been running through, so I don't think it is blocked up and the other there is a sag in, a regular lake, a natural lake flowing all winter.

Q. How much water is in that, how deep all the season through?

A. I couldn't exactly say how deep it is; there usually is about, oh, I should judge, a foot deep anyhow. Never was out in the middle of the water; the water is generally riled up by the cattle, you can hardly ever get there; it is a great place for cattle to lounge around; if you have got any cattle in the range the two lakes

390 is the places you will strike for first, because there is lots of cattle lounges around there.

Q. Is that where you go for your stock if you want them?

A. That is where I go for my stock if I want them. If you have an idea that your cattle is in that part of the range, in the Crown, I generally strike out for the lakes first, and then if they are not there I go out on the hills.

Q. Do most of the cattle that go to the Crown country stay around that lake all summer?

A. Usually they come there and drink; there is no other spring for about half a mile further west; but they come there usually to drink.

Q. You are positive, are you, that that is good water all the year around?

A. I am positive there is a good spring there, good enough for you or I to drink all the year around through the summer time.

Q. Well, they may not drink. How about the other lake?

A. Well, they are both springs,—come from springs.

Q. Do all the cattle drink out of the other lake?

A. They drink wherever they please; they lounge from one lake to the other and come there to drink.

Q. Who owns those lakes?

A. They are not owned by any one; the United States Government owns them.

Q. Isn't one of those lakes in private ownership?

A. Not that I ever knew of.

Q. Did you ever hear of one being fenced in?

A. It was fenced in at one time, but it was given up; that was years ago. There is no fence there now.

391 Q. You spoke about the Finley ditch. Where does it run?

A. That is taken out about a mile I think above his ranch, out through the range and comes out on to some of his high ground. I can not say that is the name of the ditch, but he owns part of the ditch, or believe- he does; I don't know but Light is part owner of the ditch.

Q. In reference to Mr. Light's west line where is the ditch?

A. West line? Why I should judge that ditch was about a quarter of a mile east; I think it runs through his land there about a quarter of a mile east. Now that is my judgment. I never looked at it closely all the ways like.

Q. Do you know that line of fences that runs up there, extending southwesterly from Mr. Light's place?

A. Yes, sir, up on the hill there, you mean.

Q. Well, they run along up East Sopris Creek?

A. Yes, sir.

Q. You know those?

A. Yes, sir.

Q. Now where is the ditch with reference to those fences?

A. Why there is a fence—if I understand you right, there is a fence that he has, a pasture fence in on the west way up on the side hill here.

Q. Now, Mr. Shippy, I show you a map called "Exhibit A" which is attached to the answer of Mr. Light in this case.

A. Yes.

Q. It shows the location of his ranch, of East Sopris Creek, of the forest reserve, and of a line of fences extending southwesterly from Mr. Light's place, to a point in Section 13, township,

392 9 south, Range 87.

A. Extending southwesterly?

Q. Wait a moment. To a point at or near East Sopris Creek. Now do you know that line of fences?

A. Where is East Sopris Creek? Is this Sopris Creek; is this north of Sopris Creek; is this north?

Q. That is north (indicating on map).

A. This is east (pointing)—this is west. I am kind of turned

around with that map, I don't just exactly understand it; I don't understand that map.

Q. If this is the north where the top of the map is, and this is the south where the bottom of the map is, and if this is the west where the forest reserve is found, and if near the center of the map is Mr. Light's ranch, and the east is right, and the west being on the left, I am now asking the question whether you remember a line of fences stretching southwesterly through the forest reserve up East Sopris Creek from Mr. Light's ranch?

A. Yes, sir I do.

Q. Does the line of fences that you recall extend substantially as marked upon this Exhibit A?

A. I could not say.

Q. Where is the Finley Ditch, approximately, with reference to township and section, as marked on this map, and with reference to the fences.

A. You haven't got Finley's ranch on here, have you?

Q. No, sir.

A. This is east and west.

Q. Is it inside or outside of the fence?

A. Why I think that it is all outside, although some of it
393 might come inside as the fence comes in there. What do you mean, along Mr. Light's fence.

Q. The fence that I have called your attention to.

A. Mr. Light's fence don't have anything to do with it; the cattle waters up west of there if that is what you are trying to get at; I don't know as that ditch comes down that far as to *to* come in to Mr. Light's ranch; I couldn't swear that it does.

Q. I am talking about the fence that I have pointed out to you, extending through the forest reserve up toward the creek, and I would like to have you state, if you can, where that ditch is with reference to that fence?

A. I couldn't say as that ditch reaches that far as his fence; it is Finley's ditch, and I can not say as it comes down into Mr. Light's land at all.

Q. Have you observed that ditch all the year around?

A. All the year around, no, sir.

Q. Well, leave out the winter.

A. I have observed that ditch now and on different times in the summer time as I would be riding through that country.

Q. Are you able to state that that ditch would furnish a sufficient supply of water for numerous cattle all through the grazing season?

A. Yes, sir.

Q. And that the water in it is such in quantity, and so continuous in flow that it could be relied on?

A. Well, now, it is such in quantity, although Mr. Finley
394 might shut that ditch down so that the cattle could not drin*g* there. I can not say that was continuous in flow.

Q. Which side of the fence is that ditch on?

A. It is on the north side. The ditch goes away in the field, and other places it comes around, and I don't know but that the

ditch wavers inside of the fence. Of course a ditch can't go straight through on a piece of ground.

Q. If Mr. Light turned out his cattle northeast on the vacant public domain northeast of his ranch, in what direction would they naturally drift?

A. Well, they would naturally drift every direction as far as that is concerned; they would be more apt to drift, of course, to the west if they drifted at all. They might live there all summer and stay there.

Q. Do you think that that has been their custom?

A. Well, yes, it is the custom, lots of them does live there.

Q. You think lots of Mr. Light's cattle have lived there all through the summer, do you?

A. No, I wouldn't say that.

Q. You know, as a matter of fact, that they have gone on the forest reserve?

A. Yes, sir, because I have seen them there,—yes sir.

Q. Does that have any effect upon your opinion that they would naturally, just as naturally remain near his ranch as drift upon the forest reserve?

A. Just as naturally drift any place; there has been a bunch of cattle down south,—there has been forty or fifty head of his cattle nearly all summer right,—I think it is pretty near due north of his ranch, and it has watered there right on West Sopris Creek
395 all summer, right up in them foot hills. They don't know what a forest reserve is.

Q. Would they just as naturally drift toward Aspen as toward the forest?

A. No, sir, they—this bunch of cattle would naturally drift the way they did, but they drifted that way towards the reserve; they were maybe some of them bought from Stauffacher drifted and found good feed in there and they just naturally stayed in there; I saw them several times in riding after beef and veal cattle this summer.

Q. What do you think they would have done if they hadn't had their old home there?

A. If their old home hadn't been in that direction, do you mean?

Q. Yes.

A. Well, if they had been in the habit of running on the reserve,—if they had been his old cattle, they would naturally drift to the reserve, or in that vicinity.

Q. They would certainly have gone on the reserve, wouldn't they?

A. Some of them would; I think that some of those same cattle if they had been in the habit of going on the reserve they would have done that, because a cow likes to go home, and their home is the range where they are used to running on, and they will go sometimes twenty-five miles to go to their old range.

Q. One more question about this range that you have testified about, which you said was ten miles long, and I forget how wide. What was that range?

A. That was from Williams', or from the upper country,
396 or from where Fred Light's cattle would naturally drift.
Well I should judge it was northwest,—northeast—no southeast and northwest from Prince Creek or Crystal river at the further extent, and of where I would think Fred Light's cattle would naturally drift to, about ten or twelve—it is possibly fifteen miles they would naturally drift to in that direction, the way the crow flies.

Q. Do you mean toward the Crown country?

A. Yes, the line would cross over the Crown country.

Q. Did you ever hear of any one driving his cattle into the Crown country?

A. Did I ever hear of anybody driving his cattle into the Crown country?

Q. Yes.

A. I can cite you to three ranchmen that drive them in there every spring.

Q. Who are those?

A. Robert Dwire, Mr. U. M. Trout—this is now in the house—Peter Gloeshcer and Fred Gloeshcer—two brothers; that is all that I know of that I can cite you to now.

Q. Where do they live with reference to Mr. Light's home?

A. Oh they live about seven miles from there, I should judge, just approximately,—it would be close to seven miles I should think.

Q. In what direction?

A. Well, it is northwesterly.

Q. As between that and the Crown country?

A. Yes, they live right below the Crown country,—right north. Now Mr. Dwire owns about one hundred and twenty-five to one hundred and fifty head of cattle; Mr. Trout had about seventy-five, and the two Gloeshcers one hundred and fifty; they all drove
397 them into the Crown this spring. Now I know that to be a fact because I know they do it every year.

Redirect examination.

By Mr. WARD:

Q. I neglected to ask you, Mr. Shippie—on what portions of the forest reserve is the best grass found, in relation to the timber?

A. In the lower country, the lower part.

Q. What is the character of the timber where the best grass is found?

A. Well, there is no timber excepting some scrub oak,—bunches around.

Q. Does the grazing of cattle upon that portion of the reserve hurt the timber?

A. Not in my judgment; of course I am not an expert.

Q. On the higher ranges where is the grass found?

A. In parks where there is no timber.

Q. Does the grazing by cattle in those parks hurt the timber?

A. No, sir, not that ever I found out.

WILLIAM P. FINLEY, being duly sworn, testified as follows:

Direct examination.

By Mr. WARD:

Q. Mr. Finley, where do you live?
A. Adjoining Mr. Light's ranch in Pitkin County.
Q. In which direction?
A. The south.
Q. How long have you lived there, Mr. Finley?
398 A. I have lived on the ranch six years past spring.
Q. What have you been doing on that ranch?
A. Farming; also running some cattle on the public range for the last four years.
Q. How many cattle do you run?
A. At the time I turned out in the spring, one hundred and twenty-four cattle were enough to take permit for; I also kept ten or twelve in on the home range pasture.
Q. How much land have you there?
A. A quarter section. One hundred and fifty-five acres and a fraction.
Q. What improvements?
A. A house,—log house, log barn, shed, corrals and so on—pastures.
Q. Now have you been over the range north of Mr. Light's ranch this year?
A. Over a small portion of it; I have not been over it all.
Q. Have you been over the range west of Mr. Light's ranch this year?
A. I have.
Q. Were you familiar with this range north and west of Mr. Light's ranch during the year 1907?
A. Yes, sir.
Q. Are you familiar with the Crown country?
A. No, sir, I am not; I have ridden through it and gathered cattle on the Prince Creek slip a little, but can't say that I am very familiar with the Crown country.
Q. Have you examined the condition of the grass upon the range in the neighborhood of Mr. Light's ranch outside of the forest reserve this year?
A. No, only as I have observed it in riding over looking for stock.
399 Q. What is the condition as to grass or food?
A. I would like to add a little further to that last answer if your will allow me to.
Q. Yes.
A. I did day before yesterday ride over it and examined it, some parts of it here I rode over; I forgot that.
Q. What has been the condition during the year 1908 as to the food upon that range?
A. Why, just an ordinary average year, I think, plenty of feed, as we always have.

Q. What is the character of the food; what kind of grass?

A. Mostly blue-stem, some bunch *frass* and some grass that I don't know any name for.

Q. What is the value of blue-stem for fattening cattle?

A. It is considered the best grass we have on the range.

Q. What is the character of that range as to water?

A. Well watered.

Q. What is the character of the water on the range west of Light's between Light and the forest reserve?

A. The first watering place is my ditch, and then there are springs in what is locally known as the "Williams gulch," and on the other side there are springs on the divide with slips in toward the Nutting cabin; there are springs there where cattle can drink at any time during the grazing season.

Q. And further up Sopris Creek?

A. Further up Sopris Creek they can get to the creek; and also below Mr. Light's ranch it can get to Sopris Creek, and about two miles and a half above my ranch they can get to Sopris Creek again, and then there is one ranch fenced I suppose half a mile—but I am not certain of that—not over three-quarters I think maybe over a half, they can get to the creek again for over a mile, and then there is another ranch and then we strike the line of the reserve.

Q. What evidence, if any, is there on the territory north of Mr. Light as to over-grazing this year?

A. None at all that I know of.

Q. Have you looked at it?

A. Yes, sir.

Q. What evidence is there this year, or has there been this year, as to over-stocking that territory by cattle?

A. None at all.

Q. You are familiar with the fences upon Mr. Light's place adjoining you?

A. I think so, as much as one neighbor would be with another man's fences.

Q. He has what is called a "meadow pasture"?

A. Yes, sir.

Q. And do the fences run around that pasture?

A. To the west is a fence, and also it comes to a point a few yards below my line, and from there runs on the southeast along the lane to what we call the "Emma road," running down Sopris Creek, and from there, there is a road fence runs almost north and south,—northwest and southeast, I suppose.

Q. Is there any fence west of this western meadow fence?

A. Yes, sir, there is a pasture fence.

Q. How far from this meadow enclosure is that pasture fence, approximately?

A. About a quarter of a mile, I should think.

Q. And that runs north and south; and where does it join your place?

A. At the corner of the fence where my fence and his come together.

Q. And what is there in the way of an opening?

401 A. There is a pair of bars there on his side opening into his pasture from the public range.

Q. What is the character of the fence, that inside fence which runs north and south directly east of—that is on the east side of the pasture, the meadow fence,—what is the character of that fence?

A. It has cedar posts about fourteen feet apart, I should judge; they are barbed wires and a pole on top.

Q. Are there any gates or openings along that fence on the west side?

A. I don't know whether there are any gates; I know that Mr. Light has had the fence down at times to haul wood off there in the winter.

Q. Which fence do you mean, the meadow fence?

A. The outside fence; but it has been put up; whether the fence was simply let down and driven over, or whether there is a wire gate or bars in there I don't know.

Q. But that inside fence separates the meadow pasture from the western pasture there completely, does it?

A. It does.

Q. The people that pass east and west—what use do they make of the lane, that lane you have just mentioned?

A. That is the way—we have no county road up where my ranch is, and the range—we go up that lane that I spoke of as the Emma road, we go there through a lane to a gate, and through my ranch,—from the end of this land through my ranch, then through Mr. Shuttleworth's and Mr. Dougherty's and on,—we can go on the road to the forest reserve.

402 Q. Does that road you have just described lead through those bars?

A. No, sir, we can turn off before we come into my place and go across Sopris Creek and up the hill and through those bars on to the public range through Mr. Light's pasture.

Q. Is that road used much by people passing backwards and forwards?

A. It is, in certain times of the year.

Q. What effect does that have, whether those bars are up or down?

A. A great deal; we have a great deal of trouble there in keeping our bars and gates closed at any time of the year, and more especially so in the winter and spring.

Q. What does Mr. Light use that western pasture for?

A. Milch cows and saddle horses and mares that he wishes to keep in during the season.

Q. Have you ever noticed any gaps on the extreme western fence north of the bars?

A. Yes, sir.

Q. What are those gaps placed there, made for?

A. For Mr. Light to haul wood off of the public domain,—fire wood.

Q. How far would he have to go for it?

A. Oh possibly half a mile back of this extreme western fence.

Q. It is not on the forest reserve, though?

A. Oh no.

Q. Do you know whether he hauled wood there this spring, along about May?

A. I don't know; I know that his hired man hauled wood off of there on a sled, but later than that I cannot say.

Q. Through the gaps and through the bars there is a well
403 defined road, isn't there, skid road,—wagon road?

A. There is through the bars, I think; there wouldn't be very much of a road through the gaps that you spoke of being down.

Q. How far does that road continue to be well defined and marked through the bars?

A. Above the bars?

Q. Yes.

A. Oh possibly half a mile.

Q. Then what becomes of it?

A. Well, it is grown up with grass at this season of the year.

Q. Are there any trails in that portion of the territory?

A. Yes, sir.

Q. Are they well defined, or otherwise?

A. You can strike a trail that is well defined and follow it for a distance and you will lose it. The cattle have made this trail and spread out and crossed all over the range, and the trail is gone. You can go a short distance again, or a reasonable distance, and pick up another trail maybe running in the same direction and maybe at right angles.

Q. Have you traveled over that territory in reference to finding a well defined trail leading from those bars into the forest reserve?

A. Yes, sir.

Q. Did you find it?

A. I did not.

Q. What kind of grass did you see upon the range north and northwest of Mr. Light's when you made the examination mentioned?

A. Blue-stem and bunch grass, and there is another kind
404 of grass that grows in the jack oak I have never heard any name for.

Q. Were there any cattle tracks around?

A. Yes, sir, the ground is covered with them.

Q. Any evidence of any over-grazing?

A. No, sir, I didn't see any.

Q. Have you taken out a permit, Mr. Finley?

A. I have.

Q. Why did you take out a permit?

A. Because it was cheaper than to defend a lawsuit against the

Forestry Department of the United States Government is the only reason that I can give.

Mr. KNAEBEL: I move the last question and answer be stricken out as incompetent and improper.

Cross-examination.

By Mr. KNAEBEL:

Q. What time do the cattle usually begin to come down from the forest reserve that have been up there, Mr. Finley?

A. Well about when they first begin to come away is during the cold rains in the fall; some come earlier than others,—depends something upon the weather, but in September generally.

Q. Are you familiar with the number of cattle that have been grazing through the grazing season upon the range northeast of Mr. Light's, and north?

A. Well, as I said in the direct testimony, I have only been on a small portion of that range this year.

Q. You don't know how many cattle have grazed on the public domain in that locality, then?

A. On this north and northeast range?

Q. Yes.

A. I don't know the exact numbers, no, sir.

405 Q. Roughly speaking, how many were there?

A. I told you that I had only been on a small portion of that range; I have seen cattle all summer in there browsing up this Sopris Creek that leads to Emma, and you can seldom pass by but what you see cattle on one side, and generally on both sides.

Q. North of Mr. Light's?

A. Yes, the upper end of that range runs up north of Mr. Light's and on over to the Williams ranch and down to Capital Creek, lower Capital Creek.

Q. What I am getting at is, would you know about the number of cattle that graze there through the summer? If you do know, so that you can give any idea of it let us have an estimate; if you don't know, just say so.

A. I don't know so that I can make an estimate; I have seen cattle there, but I couldn't make an estimate on the number because I haven't been over enough of the territory.

Q. You judge there has been cattle there all summer because when you have been north of Mr. Light's you have seen a scattering of a few bunches here and there?

A. Yes, sir.

Q. How many would you see at a time?

A. Well, from two to twelve or fifteen in a bunch.

Q. How many bunches?

A. Three or four perhaps, sometimes only one.

Q. As a matter of fact a great many cattle were there in the spring, weren't there?

A. Yes, sir, every spring.

Q. If all the cattle that were turned out there to grass in the

spring had grass there all through the summer, do you
406 think the grass would be as you found it yesterday?

A. You mean all the cattle that were turned in northeast of Mr. Light's?

Q. Yes.

A. I do.

Q. You think it would not hurt the grass any?

A. I think there wasn't enough cattle turned in that immediate district, what we know as the "Fred Light hill" and running from there on the right hand side of East Sopris and Sopris down to Emma.

Q. So you recognize that as Mr. Light's range, do you, in that locality?

A. No, sir, we don't recognize any range as belonging especially to any man; we all share and share alike.

Q. How many cattle were turned in there in the spring?

A. None that I know of except Mr. Light's in this immediate locality north of his ranch, north and east, and to the right hand of East Sopris.

Q. Do you know where Mr. White turned his cattle out?

A. I know that he turned part of them back of my ranch, taking them through Mr. Light's pasture and through those bars that I told you of, in the first direct examination, and dropped them in back of my ranch.

Q. What do you mean, to the west?

A. To the west of my ranch and southwest of Mr. Light's ranch, but I don't think—I think he took part of his bunch up Capital Creek, but I am not sure as to that.

Q. You have been up on the reserve a good many times, haven't you?

A. Yes, sir, frequently.

Q. Have you ever attempted to find and follow a trail all the way up?

A. Yes, sir, I have.

Q. How well defined are these trails where you do find them?

407 A. In places they are very well defined; in other places they are very dim, and in places you will find no trail at all.

Q. Have you any idea of how many cattle have been on the reserve this summer?

A. Do you mean to ask me simply on the reserve, or on the reserve and in the public domain also?

Q. I mean in that upper country there that is put down on this map attached to the defendant's answer, as the forest reserve.

A. Do you mean simply the cattle that would be on the forest reserve; do you want me to make an estimate of that?

Q. Yes, make an estimate.

A. It is a hard thing to do,—perhaps a thousand head.

Q. Are those cattle all out of there now?

A. Well, I have not been there since the snow, but to the best of my judgment they are nearly all out,—not all of them, there are

always a few small bunches of cattle get located in some warm, sunny place where there is good grazing and stay there until we go after them, but that is very few.

Q. You know that part of the reserve called "Hay Park"?

A. Yes, sir.

Q. Is there no road or trail leading up to that?

A. Not from my ranch nor Mr. Light's ranch, without going through this road through my ranch, and the upper ranches above me.

Q. If you go up the line of fence that extends up Sopris Creek, as marked on this map of defendant's attached to his answer where do you strike the road, in what section?

408 A. I could not tell you.

Q. You do strike the road, don't you?

A. The road leading to Hay Park?

Q. Yes.

A. Yes, sir, we strike the road in about three miles, or about three and a half, above these bars that they spoke of, of Mr. Light's at the corner of my fence.

Q. Isn't there any mark of a cattle trail along that fence at all?

A. There is part way.

Q. As a matter of fact isn't there all the way to the road?

A. No, sir, there is not.

Redirect examination.

By Mr. WARD:

Q. Mr. Finley, I hand you defendant's Exhibit E, a photograph?

A. Yes, sir.

Q. Do you recognize that letter?

A. I think I do.

Q. What is that generally known around that neighborhood, as what?

A. As the Fred Light hill.

Q. Do you know where Mr. Light turned his cattle out in the spring of 1907?

A. To the best of my judgment he turned them out on that hill we have seen the picture of, known as "Fred Light hill".

Q. Upon what do you base your judgment.

A. Upon the fact that I saw the gate open there leading on to that hill from his inner pasture that you spoke of, and the fact that I saw a deep, well defined trail, when the ground was soft, leading out of his field on to this hill—on to the road, rather,—and

409 from there down past his pasture fence that lies across the road, and from there to the right into the hill, and the cattle traveling back and forth on this road, and in to the range over the bank of the road, and a great many rocks down there make it almost impassable at times.

Q. Did you see any cattle at those times?

A. Yes, sir, I have ridden past down that road at all times of the year since I have been there, and to the best of my recollection I have seen cattle.

Q. In 1907 did you see any of Mr. Light's cattle, in the early spring?

A. Yes, sir, I am quite sure I did.

Q. Upon which territory?

A. Upon this Fred Light hill, as we call it, to the right hand of the road.

Q. Do you know anything about where Mr. Light turned his cattle out in the spring of 1908?

A. Not positively, but I know that this gate,—same gate that I told you of, was down and I saw cattle there, and saw them passing back and forth.

Q. Whose cattle were they?

A. Mr. Light's.

Recross-examination.

By Mr. KNAEBEL:

Q. Where did you say that gate was?

A. This one led out on to Fred Light hill that I spoke of.

Q. On the northeast of Mr. Light's place?

A. Yes, sir, it is on the northeast, opening from the meadow on the northeast side leading on to the county road, and when they go down the county road going down the East Sopris Creek
410 they pass his pasture fence, and then it is open and they can go on to the hill.

Q. When was it you saw a gate open and the marks of cattle hoofs on the ground?

A. In the spring.

Q. What month?

A. April.

Redirect examination.

By Mr. WARD:

Q. Mr. Finley, during the grazing season of 1907 did you assist any of your neighbors, cattle men, in driving cattle upon the forest reserve?

A. Well, I drove cattle upon the forest reserve, but my man that was working for me was the only one at the time——

Q. Was the forester with you—I mean the ranger?

A. No, he was not. The cattle were coming down below and they called the neighbors together for a little meeting one evening at Mr. Cookman's cabin—bunk house—and there *there* was a good deal of talk about many cows bawling for their calves; they had lost them on the Capital hill road, and we agreed to take our turns riding and keeping those cattle pushed back where there wouldn't be much danger of keeping the calves near by. Cyphers was there, and he agreed to go and help us, if possible. Something happened the day that myself and man got there and he couldn't go, and there was only us two went, and we done what we could.

Q. What did you do?

A. We gathered up cattle from Sopris Creek below Mr. Light's ranch and pushed them back on to the forest reservation.

Q. Did you see any of Mr. Light's cattle?

A. I did.

411 Q. What became of them?

A. They went with the bunch.

Q. To where?

A. On to the forest reservation.

Recross-examination.

By Mr. KNAEBEL:

Q. What month was this?

A. September, I think,—possibly October but I think it would be September.

HARRY M. SHUTTLEWORTH being duly sworn, testified as follows:

Direct examination.

By Mr. WARD:

Q. What is your name?

A. Harry M. Shuttleworth.

Q. Where do you live?

A. East Sopris Creek, Pitkin County, Colorado.

Q. About how far from Mr. Light's?

A. About a mile,—a little further.

Q. Which direction?

A. South of west.

Q. How long have you lived in that vicinity?

A. Eleven years.

Q. What is your occupation?

A. I am a ranchman; prior to this year handled cattle.

Q. How much of a ranch have you?

A. I am interested in something like three hundred acres there.

Q. Is your ranch improved?

A. Partially improved.

Q. Under how much cultivation?

A. I have I presume one hundred and fifty or one hundred and seventy-five under cultivation.

Q. Prior to this year how many cattle did you ordinarily run?

A. From fifty to two hundred head.

412 Q. What experience have you had in the cattle business in that neighborhood?

A. I bought cattle the first month I came to this neighborhood in which I now reside, and handled them continuously until this last Spring,—1908; had experience before that in cattle.

Q. How far are you from the forest reserve?

A. I should judge three and a half or four miles,—possibly a little more.

Q. In a direct line west?

A. Well, not in a direct line west; possibly in a direct line due

west it wouldn't be over two and a half or three miles from where I am.

Q. So you sold your cattle out this spring?

A. Yes, sir.

Q. Have you been over the territory in the vicinity of Mr. Light's ranch, the range, in these years?

A. Yes, sir, every year.

Q. Are you familiar more or less with this range?

A. Yes, sir, very familiar.

Q. Have you made an examination of that range this year?

A. Yes, sir.

Q. Are you familiar with conditions on the range this year, on the Fred Light hill north of Mr. Light's ranch?

A. Yes, sir.

Q. Are you familiar with the conditions of the range this year on the territory between Mr. Light's ranch and the forest reserve?

A. Yes, sir.

Q. And to the northwest of Mr. Light's range?

A. Yes, sir.

Q. What has been and is now the condition of Fred Light
413 hill range as to food?

A. Excellent.

Q. What kind of food is there there?

A. Blue-stem grass, bunch grass, and in the jack oak there is a green, narrow-bladed grass; you will find it growing in all clumps of jacks.

Q. What evidence is there of any over-grazing upon this country this year?

A. I can see no evidence of over-grazing.

Q. Were you familiar with the territory earlier in the year, this year?

A. In the spring.

Q. What were the conditions then?

A. Good.

Q. What is the character of the country in reference to the slope, as to cattle grazing?

A. It is rolling; after you get up into it a way it becomes more level; there is parks, and still there are some gulches; but it is what we call rolling, facing the setting sun it is comparatively a smooth, rolling country,—some places abrupt and steep, but, taken as a whole, I would call it a smooth, rolling country, with its abrupt features, as any other mountainous country would have.

Q. How is that fitted topographically for a cattle range?

A. Ideal.

Q. What is the nature of the water available from that range?

A. Good.

Q. What is the character now of the feed upon the unreserved public lands immediately to the west and northwest of Mr. Light's?

A. Good.

414 Q. Have you recently made an examination?

A. Yes, sir.

Q. What, if any, did you find of any evidences as to over-grazing or over-stocking?

A. No evidences of it; there is food there yet for plenty of cattle, more yet than what cattle are on it.

Q. You made an examination with reference to trails in the country west of Mr. Light's?

A. Yes, sir.

Q. Did you find trails?

A. I found trails there, a great many trails leading every where.

Q. Were you able to find any plain, well defined trails as testified to by the witnesses for the government, leading from the bars at Finley's, crossing in a southwesterly direction to the forest reserve?

A. I found no one single trail leading direct?

Q. Did you find any trail that would lead eventually into the forest reserve?

A. There is no trail leading direct that is continuous, from that gate to the forest reserve that I have ever seen or ever been able to find.

Q. What trail or road did you find at the bars?

A. I found a wagon road that I have been familiar with all the time,—drove a wagon over it.

Q. What is that wagon road used for?

A. To haul oak wood.

Q. From what direction?

A. Mr. White hauls wood from there. From which direction?

Q. Where does the wood come from?

A. Back of Mr. Light's ranch, that is west of Mr. Light's ranch.

415 Q. Is that on the forest reserve?

A. No, sir.

Q. Are you familiar with the gates,—I mean the fences in the northern part of Mr. Light's ranch along where his house is, in the meadows?

A. Yes, I know all the fences.

Q. Describe that extreme western fence leading from Finley's ranch north. What sort of a fence is that?

A. Around the pasture, his outside fence?

Q. Yes.

A. That is a very good fence, a barbed wire, and poles.

Q. Is there another fence inside of that?

A. Yes, sir, there is another fence.

Q. What is the character of that fence?

A. That is a good, three-wire fence, and a pole.

Q. And what does that fence enclose?

A. That encloses the meadow,—separates the meadow from the pasture,—that is the meadow from the summer pasture.

Q. The summer pasture you speak of is between the——

A. Public domain and this meadow.

Q. What is the pasture used for by Mr. Light?

A. I saw horses in it and cattle and cows, milch cows.

Q. Do you know where Mr. Light turned his cattle out in the spring of 1908.

A. 1908?

Q. Yes.

A. No, I don't know where he turned them out; I have seen his cattle in 1908 but I don't know from what point he turned them out from; I know he took some cattle from my place to his home.

416 Q. Do you know where he turned them out in 1907?

A. Yes, Sir.

Q. Where?

A. At a point on the Emma road, which is north of west from his house—about a quarter, or between a quarter and a half mile from his house, possibly.

Q. Did you examine that gate on Monday—I mean on Tuesday of this week?

A. Yes, sir.

Q. What access is there from that gate to the Light hill?

A. Why it is open and free.

Q. Can you by reference to Exhibit E, approximately point out the location of that gate?

A. Yes, sir.

Q. Will you please mark it with a pencil?

A. As near as I can judge it is somewhere near a little knoll there—a knoll along here somewhere, in which there is some tall wild rye. Here is the Emma county road running in this direction—(indicating on Exhibit E.)—down here is where it is (witness marks with a cross)—it is along here somewhere.

Q. How far may Mr. Light's cattle range northwesterly from his place?

A. Well, I found—in riding the country I found some of Mr. Light's cattle as well as my own, I would say twelve miles northwest of his place.

Q. When was that?

A. I think it was fall before last, when one of Mr. Light's hired man helped me bring up some, and I brought up some.

Q. How far may they go the other way, southeast towards Aspen?

417 A. I would say they would fully go that distance.

Q. Are you familiar with the Crown country?

A. Only in going there after cattle in the fall of the year, and driving beef through there.

Q. What sort of a range is it?

A. Well, it is regarded a very fine range; it is an unusual range; it is noted as a cattle rendezvous.

Q. Have you made an examination of that range?

A. I have not been over it this year.

Q. What was the condition of the grass there last year?

A. Very good.

Q. What was the condition of the grass near Mr. Light's place on the Light hill last year?

A. Very good.

Q. Have you any idea of the number of cattle that have been ranging in this territory, including the forest reserve, the past year,—1908?

A. Well, I have no cattle myself, but judging—I know pretty near what my neighbors talk, I know approximately what they have; I would say several thousand head.

Q. But you don't really know?

A. No, I don't really know.

Q. Are there more or less cattle than there used to be?

A. Not so many cattle as there were when I first came there four, five, six or seven years ago.

Q. What was the condition of the range as to being over-stocked over-eaten?

A. It was good then.

Q. What was the condition of the cattle?

A. They were good.

Q. What is the condition of the cattle now upon that range?

418 A. As fine as I ever saw.

Q. And the grass now?

A. As good as I ever saw.

Cross-examination.

By Mr. KNAEBEL:

Q. How long have you lived up there, Mr. Shuttleworth?

A. About ten years.

Q. Where did you come from?

A. West Virginia,—Clarksburg, West Virginia.

Q. Is there any stock raising done around Clarksburg?

A. My father owned always from three to ten farms, kept stock, with cattle and horses.

Q. And raised hay,—had pastures?

A. It is considered one of the finest blue-grass countries in the United States; every hoof of cattle raised there are export cattle for the English market, and are shipped alive,——

Q. That is known as blue-grass?

A. (Continuing:) —Harrison County, West Virginia.

Q. Do they cut hay there?

A. Yes, sir.

Q. Now you give it as your opinion that the grass that grows upon the Light hill is as good as that which you are accustomed to in West Virginia?

A. For fattening purposes equally as good as Kentucky, West Virginia or Colorado.

U. M. TROUT being duly sworn, testified as follows:

Direct examination.

419 By Mr. WARD:

Q. Mr. Trout, where do you live?
A. I live at Emma.
Q. How far from Mr. Light's ranch?
A. About six miles,—between six and seven I should judge.
Q. How long have you lived in this country Mr. Trout?
A. Ten years.
Q. What have you been occupied in doing since you came to this country?
A. I have been farming and raising cattle.
Q. Where is your farm or ranch situated; on what creek?
A. Why it is on the Roaring Fork.
Q. How much land have you?
A. I rent it.
Q. Have you any cattle of your own that you run?
A. Yes, sir.
Q. How much of a herd?
A. I have got about eighty head.
Q. How long have you been running cattle?
A. Oh for about seven years.
Q. How long have you been handling cattle?
A. Oh I have been handling cattle about all my life.
Q. How long have you been familiar, if you are familiar, with the range around Mr. Light's place?
A. Why I have been there ten years; ever since I have been there.
Q. How often have you been over the range during the grazing season?
A. Oh, from one to three years, about a dozen times.
Q. Are you familiar with the Crown country?
A. Yes, sir.
Q. How often have you seen that country this year?
420 A. A dozen times I should judge.
Q. What is the character of the feed now upon the Crown country?
A. It is good.
Q. How as compared with its character six or seven years ago?
A. It is as good now as it ever was.
Q. What evidences are there, if any, of any over-grazing?
A. There are not any.
Q. Or over-stocking?
A. Not any.
Q. Are you familiar with the country north,—northeast of the Light ranch known as the "Light hill"?—"Fred Light hill"?
A. Yes, sir, I have rode that about two years ago, I guess.
Q. Do you recognize the photograph, Exhibit E," as being the Fred Light hill?
A. Yes, that is that hill.

Q. Well, have you been over that country and made an examination of it this year?

A. No, sir.

Q. Were you over there last year?

A. Yes, I was there last year.

Q. What was the condition of the feed upon the Fred Light hill last year?

A. Well, there was good grass there last year.

Q. Were there *than* any evidence of over-grazing or over-stocking?

A. No, sir.

Q. How is the water supply upon the Light hill,—available to the Light hill?

A. There is good water there; they have got to go mostly to the creek to drink, to Sopris Creek.

Q. How is the water supply in the Crown country?

A. It is good.

421 Q. Are the banks of Sopris,—East Sopris and West Sopris, precifitous, or otherwise, to interfere with cattle?

A. No they can go up and down there most any place they come to.

Q. What is the flow of water in those creeks?

A. What is the flow?

Q. Yes.

A. I never seen it less than a foot deep in each creek.

Q. And how wide?

A. Oh five feet wide,—four to five feet wide. I forget how many ranches are watered by that creek.

Q. There is an abundant supply of water?

A. Yes.

Q. How much range,—leaving out of consideration the forest reserve, what is the range that Fred Light's cattle can easily avail themselves of, when turned out upon the Fred Light hill in the spring?

A. Oh, they can go—from Fred Light's place they can go to Carbondale.

Q. About how many miles?

A. Well, sir, it must be,—well, it is between twelve and fifteen miles, I should judge.

Q. And what is the character of the feed?

A. It is good; that is the best *they* is right down through there.

Q. And in which direction can they go the other way towards Aspen?

A. I cannot tell you about that; I never rode that range up in there.

Q. Are there many fences in the territory between the Light hill and Carbondale?

A. There is just the Parkers has got a ranch in there and the Dunnigans, and with those two ranches they can go to Fate Girdner's ranch, that is at Carbondale.

Q. Do the fences around the two ranches last mentioned, interfere with the cattle upon that range?

422 A. No, they ain't got a line between the two ranches, and they can go on either side to the ranches.

Q. And may they not go to the north or the south of these ranches?

A. Yes, they can go either way, there is nothing to hinder them going either side of it.

Q. Is there a supply of food sufficient to keep them alive as they go from that country?

A. Yes, that is the best food they got right down through that country.

Q. Do Mr. Light's cattle come down to that country?

A. Yes, I was in there last Sunday and I myself saw a dozen of Mr. Light's cattle in the Crown—maybe two dozen.

Q. How far was that from Mr. Light's place?

A. It is about seven miles, or eight.

Mr. KNAEBEL: The two preceding questions and answers are objected to as incompetent, upon the ground that this evidence concerns facts which are too recent, in view of the time of the initiation of this case, to be competent as evidence for any purpose, such as they are calculated to subserve.

Q. Mr. Trout, if you were compelled to drive and herd your cattle off of the range, off the forest range, what effect would that have upon the cattle business with you?

Mr. KNAEBEL: Objected to as immaterial what would happen to his business, or the cattle business.

A. I would have to sell them if we had to herd them.

Q. Why?

423 A. Because I could not *many* anything herding them,—holding cattle and herding them.

Cross-examination.

By Mr. KNAEBEL:

Q. How many head of cattle have you?

A. I have got about eighty,—somewhere near that.

Q. Did your cattle graze upon the reserve this summer?

A. I never seen but two there. Mr. Powell said there were some U.T. Cows there; I suppose one or two got up there. Mostly I gathered cattle out of the Crown,—sold them to Tucker and Son.

Q. Do you know where your cattle were during the summer?

A. I know where the most of them were.

Q. Now, Mr. Trout, you testified that the water on the range, which is spoken of here as the "Light range", is good?

A. Yes, sir.

Q. You don't mean by that to have it implied that there is plenty of drinking water for cattle up there in among the gulches all through the season?

A. There is plenty of water in what they called the "Williams gulch", good water at Finley's ditch.

Q. Is that on the Light range?

A. Yes, sir, and they got water to the Crown, good water to Copris Creek,—two Sopris creeks.

Q. Now don't let us bite off more than we can chew. I am talking about the Light hill. Mr. Ward asked you about the water on Light Hill.

A. I said they would have to go to the creek to drink.

Q. Is that the only water?

A. There is a ditch on the other side.

424 Q. How far from the creek up to the top of the hill?

A. Oh it is between three-quarters of a mile and a mile; I don't think it is any further than that.

Q. That is the Sopris, is it?

A. That is the Fred Light hill.

Q. No, I am talking about the creek; it is East Sorpis creek?

A. Yes.

Q. And the Sopris?

A. Yes, East Sopris Creek, and that there Fred Light hill they have been talking about.

Q. How far from the top of that hill or ridge down to the Roaring Fork on the east?

A. Oh, it must be—it is further down that way, about a mile or a mile and a quarter, something like that, to the Roaring Fork, and there is a ditch down there closer than that, on the outside of Mr. Stockman's ranch.

Q. Would you call this country,—agree with Mr. Shuttleworth that it was a rolling, mountainous country on the northeast of Fred Light's?

A. Yes, that is a mountainous country.

Q. That is a mountainous country?

A. Yes, sir.

Q. You wouldn't describe it as a rolling country, would you?

A. Well, it is flat when you get up on top.

Q. Is it a mesa up there?

A. Yes, the lower end of it is a mesa, and then after you get across the top of it, it goes down steep.

Q. Take it along about in June or July, how high does the grass stand up there as you wade through it?

A. Oh, I don't know, I couldn't say just how high that

425 comes up there through June and July; there is good grass there now.

Q. How high is it now?

A. Six or eight inches high.

Q. All absolutely thick, is it?

A. Why no, it ain't thick.

Q. It isn't like a blue-grass country, is it?

A. No, you cannot go on there and mow with a mowing machine; there is good grass there for cattle.

Q. How high is it in July?

A. I don't know as I was ever there in July.

Q. You know all about it when it is good, but you don't know as much about it when it is bad?

A. I have been up there along this time of the year, and I know there was grass there.

Q. And cattle have not been there as much during the middle of the summer, have they?

A. I couldn't say as to that.

Q. You know that is used as a Spring range?

A. I know it *us* used as a spring and fall range.

Q. But so far as its being used during the hottest months you don't know?

A. Well, if they get up there I think they stay there. I have seen cattle up there all the time going up and down the road; you can see continuous trails, up and down that hill, of cattle.

Q. Trails made going up or coming down?

A. Well, I suppose they are made both ways.

Q. Do you think any cattle that got up on that hill once would stay there all summer?

A. No, sir, I wouldn't say that.

Q. I don't mean to misinterpret you, but I think that was your answer.

A. I said cattle would go up and down there, and some
426 would stay there all summer. All cattle that would go on there wouldn't stay there, they travel backward and forward.

Q. What is your explanation, Mr. Trout, of the fact that notwithstanding the grass is so fine on that hill, that all the cattle don't stay there, that most of them go away?

A. There is good grass in the Crown, and they don't all stay there.

Q. They don't most of them stay there, do they?

A. No, they don't most,—yes there is a good many cattle there in the Crown; there must be four or five hundred cattle in the Crown now.

Q. But there are twenty-five hundred to three thousand head of cattle turned out, according to one witness, on that general range there. Now this Crown country, as I understand it, is one of the best parts of that entire range, and you say there are five hundred head there. Where do those go?

A. They are around down on the Fred Light hill, and Prince Creek and Thomas Creek.

Q. Could you explain a little more clearly, if you would, why, in your judgment, the cattle don't all,—I won't say all—why most of the cattle don't stay on this range, instead of going up on to the reserve?

A. Well, the grass gets tender, and the flies are worse down below,—the grass gets tender and they work up as the flies gets a little worse down below.

Q. But you don't think that the feed question has anything to do with it, except as to tenderness or toughness of the grass?

427 A. No, I believe it is just as good grass as they get,—always tender.

Q. How far do they have to go for water in the Crown country?

A. Let me see,—there is three springs,—there is four springs over there and two lakes.

Q. Are you very familiar with that country all through the year?

A. Yes, sir.

Q. All through the summer?

A. I have never been there after I—in the fall I never go there after I get the cattle in for the winter.

Q. Is there excellent water there?

A. Yes, sir, spring water runs out of the ground.

Q. Where are the springs with reference to Sopris Creek?

A. Right north, right straight over the hill right north, there is two springs there.

Q. How far off from the creek?

A. The first one is about a mile; then there is a lake about a quarter of a mile from that one.

Q. A lake a quarter of a mile away, not a quarter of a mile from one lake to the other?

A. A quarter of a mile from one lake to the other, and about a half mile or a mile across to another spring.

Q. Are these springs up on top of the hill?

A. Yes.

Q. Right up on top, are they?

A. The ridge rolls over and the springs are right underneath them; there is water in there now three feet deep.

428 Q. How about the water in those lakes in the midsummer,—not this year, but an ordinary dry year?

A. There is always water in them lakes.

Q. Plenty of water?

A. Yes, sir; there is one place that the dam went out and the water runs down from the spring three or four hundred *years* right on top of the ground, and goes down in the gulch.

Q. What is your opinion, Mr. Trout, about whether the unreserved public lands would be enough for all the cattle, cutting out the reservation?

A. Yes it would, what there is now.

Q. You think so, do you?

A. Yes, sir.

Q. You think that it would be a good thing for the community to cut out the reservation entirely?

A. Yes, for grazing purposes I think it would be just as good if they would fence them; I would rather have them fenced as to be the way it is now, and let them keep their fees.

Q. If that reservation were fenced, no matter who did it, would you feel that you would like to make any use of the reservation at all?

A. I suppose if I did I would have to pay a pretty good price for it.

Q. Suppose you didn't have to pay anything?

A. The way this thing is coming up you wouldn't get anything there for nothing.

Q. I want to get at your views of the reservation. Suppose it were fenced off and you had the privilege of putting your
429 cattle in there or not, as you chose, do you think you would use it?

A. I would use it to get free grass, but I wouldn't pay anything for it; I ain't paid so far.

Redirect examination.

By Mr. WARD:

Q. Mr. Trout, what would happen if the forest reserve was fenced off from cattle, and no cattle allowed there; what would happen to the grass on the forest reserve?

A. Well, if they fenced that off and wouldn't allow no cattle on it the fire would come out and burn the whole country, if they got fire on the range it would burn the whole country up.

Q. So what profit is there to the reserve for cattle eating the grass off?

A. I should think it would be profit for the cattle being in there.

Q. As to a protection, what protection is it?

A. It would keep the fire down I should think.

Q. What percentage of fires have there been since cattle ate on the ridges, as compared with the time before cattle came here?

A. Why there hasn't been a fire up there since I have been there; there has been cattle there all the time. There has been fires up there, I could see where it went.

Q. You could see traces from a fire?

A. Yes, sir.

Q. Since you have been here there have been no fires?

A. No, sir.

Q. Do the cattle eat the trees up there?

430 A. No, they don't; I never seen no cattle eating pine trees.

Q. What effect, if any, does grazing by the cattle have upon the trees of the reserve?

A. I don't think there is any.

Q. Where is the best grass of the forest reserve?

A. Off in them parks; where there is a park there is pretty good grass.

Q. What do you mean by "parks"?

A. Take Hay Park, you know, and those parks like that where there is no timber.

Q. Now is has been testified to here upon questions on cross-examination, about the reasons why cattle stray around. What do you think the reasons are for the cattle straying around, never staying in one place?

A. Well, they have different reasons. You take and turn them out, they won't stay in one place, they want to roam around; and if you buy a bunch of cattle, say about ten or twelve miles away, they will want to go back on the same range they were bought from. I

bought a bunch last fall and one, she went about ten miles back to her old range.

Q. Was that on account of better grass on the old range?

A. No, just acquainted with the old range.

W. L. GIRDNER, being duly sworn, testified as follows:

Direct examination.

By Mr. WARD:

431 Q. What is your name?

A. W. L. Girdner.

Q. Where do you live?

A. I live near Carbondale, Garfield County.

Q. What is your occupation?

A. Farmer and stock-raiser.

Q. How long have you lived in this country,—western Colorado?

A. For the last -wenty-four years in that vicinity.

Q. With whom are you connected in your business?

A. With the Dingle Mercantile Company.

Q. How much land does your company control?

A. We have got fourteen hundred acres, or nearly that,—not quite.

Q. Under what use?

A. Most of it is in farms, and some pastures.

Q. And what do you raise on it?

A. We raise hay and grain, potatoes and beets.

Q. What livestock have you?

A. We turn out four hundred head of cattle and fifty head of horses.

Q. How long have you been handling cattle in that locality?

A. Thirteen years.

Q. Are you familiar with the range, and range conditions in that locality?

A. I am.

Q. Are you familiar with the conditions extending as far as Mr. Light's ranch?

A. I am.

Q. You have had occasion to go over these ranges, have you?

A. I haven't rode much for the last two years, but I have been over the range once in the last month; I rode over a part of

432 the public domain, and was up in the forest reserve,—that is the only trip; I have a man that rides all the time.

Q. During this trip that you speak of, did you notice the conditions of the food upon the range?

A. I did.

Q. On what part of the range was that?

A. I rode across the government land,—what we call the public domain there,—a six miles strip, and into the forest reserve about,—probably two miles.

Q. Where was this six mile strip you speak of, in reference to the Crown country?

A. The Crown country is in the midst of this six mile strip.
Q. What was the condition of the grass?
A. It was very good.
Q. What was the condition compared with years past?
A. I think it was as good as I ever saw it.
Q. How did you find the grass up on the forest range?
A. It wasn't very good where I was; I was in Hay Park; there was very little grass there.
Q. It had been eaten off, had it?
A. I don't know whether it had been eaten off, or whether it hadn't grown, there were no cattle there, and there didn't seem to be anything there.
Q. Do you see any damage done to the forest growth?
A. No.
Q. What would be the effect of keeping cattle off of the forest reserve entirely, as to the grasses and weeds growing there?
A. My opinion would be, it would be very injurious to the forest.
Q. In what particular?
433 A. Grass and weeds would grow up, a fire would get started and burn all the timber off from it in the whole country.

Mr. KNAEBEL: The question is objected to, and the motion is made to strike out the answer, on the ground that it is immaterial to the issues in this suit whether the cessation of grazing would or would not result in fire, or injury to the reservation.

Q. How frequent are forest fires now, compared with when you first came to this country?
A. It has been several years since we have had a forest fire; about ten years ago, I think it was, we had very frequent fires, when there was more undergrowth.
Q. For what reasons do you think this took place? Why was this?
A. Well, I think that the cattle grazing there has kept the foliage down, and there is not as much to burn,—except green trees.
Q. How many head of cattle did you say you have been running this year,—how many cattle?
A. I turned out four hundred.
Q. Have you any idea of the number of cattle that have ranged and grazed this past season,—1908, in the territory between Johnny Williams' place and Carbondale,—do you know?
A. Well, I would estimate about twenty-five hundred,—maybe three thousand, I don't know.
Q. How does that number compare with the number of cattle that have been grazed upon it in former years?
A. It is hardly half what they used to run there.
Q. How many cattle will this range, including the forest
434 reserve and the unenclosed lands south of the Roaring Fork in the limits I have given, support?
A. Do you mean the government land, or the forest reserve and the government land?

Q. I mean the government land, all the open land from Mr. Williams' place to Carbondale?

A. I would judge about eight thousand.

Q. Have you seen during the past year any evidence of overgrazing in that territory?

A. I have not.

Q. How about in years past?

A. Well, we have always had plenty of grass there.

Q. What is the character of this blue-stem as to putting meat and fat upon cattle?

A. Blue-stem is the best grass we have in this country for fattening purposes.

Q. Is the value of that confined to the early spring growth?

A. Oh, no, it is all summer, and then in the fall it cures up, and it is good until it is covered with snow.

Q. When do the cattle really begin to put on the fat?

A. Well, about June we begin to get beef from the Crown country, and they keep fat, too, from that on.

Q. And you get beef in June?

A. Yes, sir.

Q. And what do they live on?

A. Blue-stem and other grasses.

Q. What constitutes a majority of the grass there, what kind of grass?

A. In the low country——

Q. You mean on the Crown country?

A. Yes, the Crown country—it is mostly blue-stem, and up higher it is in different grasses, more bunch grass and peas, and other grasses higher up.

435 Q. What are the water conditions of the Crown country?

A. Well, it is well watered all over the whole country; there is no scarcity of water any place.

Q. What are the water conditions of the country spoken of as the "Fred Light hill"?

A. I am not very familiar with it, but there would be no distance for cattle to go to water; I don't think over a mile, and that is not far.

Q. You are familiar with Capital Creek where it strikes the Fred Light hill?

A. Yes, sir.

Q. Is it possible for cattle to get water there?

A. Oh, yes, get water from a good many places.

Q. From the Fred Light hill?

A. Yes sir.

Q. Take East Sopris, how are the banks there?

A. East Sopris, wherever you go you can get to the water anywhere; Mr. Light has a fence there a little west, and below his fence two or three miles they can get to water anywheres they go to the creek.

Q. Is this country so inaccessible to water as to prevent profitable cattle raising?

A. Well we never think about any dry places,—always have plenty of water,—cattle goes to water any place there.

Q. What would be considered, according to your customs and practices as Fred Light's range?

A. We don't consider anybody has a range; it is always public domain, we share and share alike; we all turn out and the
436 cattle gets mixed up from—we will say from Aspen to about six miles south of me; oftentimes I gather up Fred Light's cattle and put them in the field, and he does the same with mine, and they scatter for twenty or twenty-five miles along there, and so Fred Light's range we think is all alike, the whole country.

Q. If Fred Light should turn his cattle northeast of his ranch upon what is called the Fred Light hill, in the month of April, and those cattle, some of them, should be found upon the forest reserve in the month of June, could you give any reason for that?

A. I could not.

Q. Could you give any reason if they should be found in the Crown country in the month of June?

A. I could not.

Q. What are the habits of cattle in reference to staying in one place?

A. They seem to wander around a good deal.

Q. Is it caused by food, or their habits and instincts?

A. It is not caused by food; sometimes they are driven, sometimes they naturally go from one place to another—leave good feed to go to another place; I don't know why that is, but it is the case.

Q. Have you taken out a grazing permit?

A. I did.

Q. Why, Mr. Girdner?

A. Well, I thought it was cheaper than these lawsuits.

Mr. KNAEBEL: That last question and answer are objected to, and the motion made that the answer be stricken, upon the ground that the motives of the witness in taking out a permit are not material to the question whether the rights of the plaintiff have been
437 infringed, or are likely to be infringed by the defendant.

Cross-examination.

By Mr. KNAEBEL:

Q. Mr. Girdner, I would like to have the explanation again, if you will,—your theory of the value of the cattle up there in the protection of the reserve against fire?

A. Well, as I stated before, when a great accumulation of weeds and grass and underbrush comes up there is more danger of them burning when it is dry than if it wasn't there; that is the only explanation.

Q. Is that a theory of yours, or have you ever examined it?

A. Oh, yes, I say that is my opinion.

Q. Do you know of any example which you can cite?

A. Only by no fires being there since the cattle have been there.

Q. When were the fires you have referred to, in this forest reserve,—how long ago?

A. I think it was ten years ago that we went up there, all us fellows, and fought fire for a time,—had a very serious fire.

Q. Is that the only fire you remember?

A. Oh, no, many fires before that.

Q. None since?

A. There have been some since, yes, but there hasn't been any for two or three years in this vicinity.

Q. You think that is due to the cattle?

A. I actually believe that the cattle themselves protect the forest there, in grazing the grass off.

Q. Now you said when you went up there the Hay Park
438 grass was all eaten off?

A. I don't know whether it was eaten off; there was not much there; looked like it was pretty barren.

Q. You remember in the old days that it was pretty long?

A. It never was very long there since I have been there.

Q. Your estimate of the total number of cattle that are there now was from twenty-five hundred to three thousand in the valley?

A. Yes, I should think so; that is about what I would estimate it.

Q. When were there eight thousand cattle in there?

A. I didn't say eight thousand; I say that I think it would support eight thousand, the whole territory that I included; there is lots of territory there.

Q. When was that, that there were so many cattle up there?

A. About ten or twelve years ago, a great many, but not eight thousand; I think we have had five thousand there.

Q. Well, as the country has been settled up haven't they gone to farming more?

A. No, it being a forest reserve you can not settle in that. There is just about the same grazing territory as there was then,—ten years ago.

Q. Have you got your eye on any peice of land in the forest that you would like to settle on?

A. No, they have barred me out.

Q. You are not feeling very good over there?

A. Oh, yes, I am good friends with the forest people, we are getting along fine.

Q. What was the trouble?

A. I don't know as that would come in here,—no trouble about it at all; if the forest people don't want their lands settled up
439 why that is all there is to it.

Q. You did have some little difficulty over some kind of an entry, didn't you?

A. Yes, some little difficulty over an entry?

Q. But no hard feelings?

A. Oh no, none whatever.

Q. You rode over the range through the Crown country last month?

A. No, I didn't ride through the Crown country; I said I rode over the government strip that the Crown is in; I didn't go through the Crown.

Q. Well, about where did you go; what was the line of your ride?

A. I rode almost due south right across the strip of land that runs along—our ranch comes out next to this, and then there is government land to the forest reserve—a six mile strip there—and I went right straight south almost.

Q. Your ranch is down near Carbondale?

A. Yes, sir.

Q. Carbondale is on the Sopris river?

A. No, on the Crystal.

Q. Oh, on the Crystal river?

A. Yes, sir.

Q. That is over further west than Sopris?

A. Yes, further west.

Q. Wouldn't you pass through the Crown country if you went due couth?

A. No, sir, I went south after going—I went to the right after going south; it was west then.

Q. And you didn't pass through the Crown country on your ride last month?

A. No, I haven't been there this summer. I was there last year.

Q. You said the grass was good below,—very good?

A. Yes.

440 Q. And the grass in the forest was poor?

A. Oh, no, in this Hay Park—pleas- let me tell it the way I did—In the Hay park there was poor grass there.

Q. Was all the grass in the forest poor?

A. Oh, no, the grass in the forest was good grass.

Q. But it was eaten off close enough so as not to create fire?

A. Well, the most of the distance I went over was, I don't know how is was all over.

Q. What, in your judgment, Mr. Girdner, is the reason why the number of cattle in that valley there, and on that range, has diminished?

A. Well, on account of making a profit. Our expenses are getting higher and higher each year; we have to pay the government twenty-five cents a head.

Q. You haven't had to pay that——

A. The cattle business is not as flourishing as it was.

Q. You haven't had to pay the government twenty-five cents a head any length of time?

A. One year,—two years anyway; I don't know whether we paid twenty-five cents the first year or not; and then, to more fully explain, a great many have gone to farming and quit the stock business.

Q. That is up in that region?

A. Yes sir.

Q. Agriculture is increasing there, is it?

A. I think it is.

Q. What is the comparison between the products, so far as you know, of that valley, of an agricultural character, and the
441 value of the stock up there?

A. Oh, there is a vast difference, I couldn't hardly estimate the difference.

Q. The stock is more valuable?

A. No, agriculture is more valuable.

Q. Is it?

A. Yes.

Q. When you put stock in the Crown country you would find some of them got up in the forest, wouldn't you?

A. Very few; not unless they were driven they wouldn't be but a few go; I think I had a hundred head in the Crown nearly all summer out of that four hundred, and I found three head on the forest reserve that day that I went up.

Q. Has the fencing in of ranches in the valleys of the Sopris and Roaring Fork interfered much with cattle ranging?

A. But very little.

Q. They can get through all right, can they?

A. There is plenty of summer range, and the hay is raised on the farms, so that it is better than it used to be when we run them for feed.

Q. Really there is more feed produced there now than there used to be, isn't there?

A. Yes, sir, very much more.

Q. You spoke about the possibility, or the fact rather, of cattle getting mixed up all the way from Aspen to Carbondale?

A. I did.

Q. Now you don't mean by that, Mr. Girdner, to have it understood that there is a general range of country extending from
442 Carbondale to Aspen that is just so very wide, and that when the people turn out their cattle any place along there from their fences into it and let them go freely, at the end of the grazing season they will all be indiscriminately mixed up from one end to the other; that you are just as likely to find a Light cow up to Aspen and another one down at Carbondale, as to find them any other place, do you?

A. I certainly do; that is the way they turn them.

Q. So that they are absolutely mixed?

A. So that they are absolutely mixed from one end of the range to the other.

Q. Uniformly scattered all over that range?

A. Not uniformly, but you are liable to find anybody's cattle any place.

Q. You mean you may find some?

A. You wouldn't find them all mixed up, but when you turn out the cattle in the spring they turn them up and the cattle wander where they please, just go every place; there is very little riding done, and cattle go where they please, and in the fall we gather them up. Mr. Light will send word to me if there are any of his cattle in the field to gather them up, and I do the same with

him, and after a while we exchange our cattle and get them all home. That is the system of our cattle business over in this country.

Q. How many of Mr. Light's cattle did you find this year?

A. I believe I got three, and then I told him where there was two more at a neighbor's six miles south.

Q. That is merely a case of cow wandering, or a steer,—
443 kind of a Christopher Columbus among your cattle that wanted to discover a new country?

A. I couldn't tell you, because I am not acquainted with the cow language.

Redirect examination.

By Mr. WARD:

Q. Mr. Girdner, in speaking about the cattle men going out of business the last few years, what, if any, effect does the enforcement of the rules and regulations of the Forestry Department have upon the cattle business?

Mr. KNAEBEL: Objected to as irrelevant, because this is not the way to settle this particular lawsuit, by raising that question; that question must be determined in some other form, by some other means.

A. There seems to be a great deal of dissatisfaction with the rules and regulations of the forest reserve, and adding on this fee still, that makes it a little more expense, and that is the only reason in regard to forestry that I know of, that they are quitting the business.

Q. I read you from "Defendant's Exhibit H", being an application for grazing permit, as follows: "I also agree to forfeit the permit whenever the National Forest for any reason ceases to exist, or for a violation of the National Forest regulations now or hereafter adopted, or of any of the terms hereof, or whenever an injury is being done to the forest by reason of the presence of the
444 animals therein." Does that provision in the application for a permit have any effect upon the cattle business in that locality?

Mr. KNAEBEL: That is objected to as incompetent, and as calling for an opinion of the witness, upon which there is no bases or competency shown for the witness to answer, and which, if answered, would be wholly irrelevant to this judicial proceeding.

A. Well, this is a pretty hard rule and regulation; we have all signed it, and I suppose we will have to live up to it, but signing the "hereafter" there to comply with the rules that may be made, we don't know, we might not want to.

Q. You are afraid of the hereafter, are you?

A. I have been; I am all right now.

Q. I read you Regulation 47 from the 1907 Use Book, set out in the bill of complaint of the United States against Fred Light; Persons owning cattle and horses which regularly graze on ranges loca-

ted along the boundary line and only partially included within a National Forest may be granted permits for such portion of their stock as the circumstances appear to justify, but may be required to herd or so handle their stock as to prevent trespassing by that portion for which a permit is not granted, and to sign a supplemental agreement to that effect.

What effect, if any, does the enforcement of such a rule have upon the cattle business in your locality?

Mr. KNAEBEL: Objected to upon the ground that it is incompetent and immaterial.

445 A. It would have the effect that we could not run cattle if we had to herd them off the forest reserve.

Q. Is such a rule a reasonable rule for the protection of forest?

A. I think not.

Q. Is it a reasonable rule for the management of the cattle business?

Mr. KNAEBEL: I move that the preceding question and answer be st-icken out as incompetent, asking the witness's opinion whether it is a reasonable rule, and immaterial as bearing upon no issue in this case; and I object to the last question upon the same ground.

A. It is not a reasonable rule.

Q. Are you acquainted with the general opinion of the cattlemen of standing and integrity in the Roaring Fork Valley, as to their views of the reasonableness of the rules and regulations of the forestry department?

Mr. KNAEBEL: Objected to upon the ground that it is entirely immaterial whether such opinion exists, or whether this witness knows of such an opinion, inasmuch as that question is one which might have its influence in determining a matter of executive policy but can have no influence whatever in a judicial proceeding to determine the question whether a trespass, or trespasses, were or were not committed, or are or are not threatened.

A. I am acquainted with the opinion.

Q. Now what is the opinion?

446 Mr. KNAEBEL: Objected to upon the same ground as the last specified.

A. They are all opposed to the policy of the forest reserve, is the opinion of all of them in that vicinity up there.

Q. What is that opinion?

A. It is the expense, and the rules and regulations that we would have to abide by, is the objection to it.

Q. Why do they object to them.

A. Because we have always had the range free, and we feel like we need it yet to make a living.

Q. What is the effect of putting salt upon the higher range, as to cattle being led up there?

A. Wherever salt is placed it has a tendency to lead cattle to it; they stay there better.

Q. What would be the effect upon Mr. Light's cattle, the fact that there is a large amount of salt placed upon the forest reserve in the vicinity of Mr. Light's range?

A. They are liable to follow the other cattle into the forest reserve.

Q. Do you know whether or not the cattle men in your vicinity have generally taken out permits?

A. They have generally; some of them haven't, but generally they have taken out permits.

Q. Do you know what causes have influenced them to do so?

Mr. KNAEBEL: That is objected to, first, because it is asking for the opinion of the witness, the results of his conversation with others, or rumors; because even if he could testify directly on the
447 points, it is not material in this inquiry what motives influenced any person to take out, or to refuse to take out a permit.

Q. (Question read by stenographer).

A. I suppose it is to comply with the rules of the department.

Q. Has the fact that Mr. Fred Light has been sued, had any influence or not in these matters?

Mr. KNAEBEL: Objected to upon the same ground as stated for the last objection.

A. On others, or on myself?

Q. On others.

A. I could not say.

Q. Has it had on yours?

A. None whatever.

Recross-examination.

By Mr. KNAEBEL:

Q. Now, Mr. Girdner, you testified that you didn't know the cattle language?

A. Yes, I don't know it.

Q. I would like to ask how you know, then, how it is that you know that the putting of salt upon the higher ridges of this reservation, many miles away from Mr. Light's ranch, would induce cattle bought by Mr. Light and carried into that country from a distance, to go away up there on the reservation when they had never been there before?

A. I believe I stated that they were liable to follow up other cattle,—they are liable to follow up other cattle.

Q. That is your answer in reference to the salt. Do you know that one cow tells another?

A. I don't know.

448 Q. Don't you think they would follow cattle if there were not salt up there?

A. They might.

Q. So far as the wisdom of putting salt upon the range is concerned, you don't say it is unwise, that it is not a good way to use the forest range, do you?

A. That is an opinion that I am not able to testify to; but some very good stockmen claim it is unwise to put salt on the range. I think it is wise, but then that is only my opinion; there are others that say it is a bad thing.

Q. You have never been required to herd your cattle away from the line have you?

A. I have not.

Redirect examination.

By Mr. WARD:

Q. What effect would the salt placed upon the forest reserve have upon over-grazing those portions of the forest reserve?

A. Wherever there is salt there is not much grass around it for a ways; it is eaten off more around the salt than any other place, and close to the salt they stay there and eat off the grass.

Q. So what would the effect be of putting salt upon the forest reserve?

A. It would have the effect of holding the cattle near the salt, and there would be grass there that would be poor for some little distance around, and they would go there for a lick of salt and naturally make a kind of stopping place.

Q. And what would be the effect upon the grass in the vicinity?

449 A. Well, it would be eaten off closer than where there was no salt.

J. W. ZIMMERMAN, being duly sworn, testified as follows:

Direct examination.

By Mr. WARD:

Q. What is your name?

A. J. W. Zimmerman.

Q. How -ong have you lived in this western Colorado, Mr. Zimmerman?

A. Twenty-five years last April.

Q. What has been your occupation during that period?

A. I have been a ranger, and a stock-raiser on a small scale.

Q. How long have you handled stock?

A. I bought the first cattle I ever owned in 1884, twenty-four years ago last August.

Q. And you also engaged in ranching?

A. Yes, sir.

Q. What official position, if any, do you now occupy?

A. I am Sheriff of this county, Garfield County.

Q. You have cattle now on the public range?

A. Yes, sir.

Q. Hove you been at any time familiar with the range between Mr. Light's place and Carbondale?

A. Yes, sir, I have raised cattle on that part of the range for about fifteen years, anyway, continuously.

Q. Are you familiar with the condition of that range this year, personally?

A. No, sir, I have not been on that part of the range for about four years.

Q. During the period when you ran your cattle upon that range, how many cattle approximately, were run on the territory
450 between the Williams Brothers ranch and Carbondale, including the forest reserve to the south of Roaring Fork.

A. Oh I should think somewhere from four to five thousand head for several years anyway.

Q. What effect, if any, as to over-grazing did the running of between four and five thousand head upon that territory have?

A. Well, the range is not as good as it was in 1884 and '5,—it is not now, but it was better four years ago than it was eight years ago. There were a great many horses run in there one time winter and summer, and cheap ponies that ran in there, that nobody got any good out of, and they finally sold them out at five, seven and eight dollars a head and shipped them out of the country, and the range has improved ever since that.

Q. What change has been made on this range in the last five or six years by fencing or ranches?

A. Very little, if any; there have been very few ranches been taken up in fifteen years in that country—very few.

Q. So as regards *to* extent of territory, how much open, unfenced land is there now as compared to ten years ago?

A. Practically the same.

Q. And if I understand you right, the present range is better, or as good, as it was then?

A. It is better than it was ten years ago; it was the last time I have been over that part of the range.

Q. How many cattle, in your opinion, will the territory from Williams Brothers to the southeast, down to Carbondale on the northwest, including the forest reserve, support now?

451 A. Oh I should think anyway five or six thousand head.

Q. You don't know how many have been running there this past year?

A. No, sir, I do not.

Q. Have you some cattle in the Crown country or that neighborhood this year?

A. I understand that I have got fifteen or twenty head in there that have strayed back in that part of the country but I don't know.

Q. Are you familiar with the general condition of the range in that territory this year, as compared with early years?

A. Only from what I have heard other- say.

Q. Only from what you have heard others say?

A. Only from hearsay.

Q. Have you taken out a permit to graze your cattle on any portion of the forest reserve?

A. No, sir.

Q. You are the Zimmerman against whom suit has been brought by the United States recently?

A. Yes, sir.
Q. To recover damages and injunction, and so on?
A. Yes, sir.
Q. Why didn't you take out a permit, Mr. Zimmerman?

Mr. KNAEBEL: Objected to on the ground that it is immaterial.

A. Well, I didn't consider it was right and proper that I, as a free American citizen, should have, as most of the people express it,—to have some body come around and tell me how to run my business, and I object to signing an application there to permit us to do things that I can not do, and follow the business.

452 Q. Did you want your cattle upon the forest reserve?

A. No, sir, there is plenty of good grass outside for my cattle; if they would fence it up I believe my cattle would do better than they would on the forest reserve.

Q. Were there any efforts made by forest officials to persuade you to take out a permit?
A. Yes, sir.

Mr. KNAEBEL: This is objected to, what transpired between this witness and the forest officials has nothing to do with any issue in the present case.

A. They simply threatened that they would put me out of business; I couldn't never have any privileges on the forest reserve if I didn't take out a permit.
Q. Who made such a threat?
A. Mr. Arnold finally told me that.
Q. Any others?
A. Well, I don't know whether it was in the form of a threat, or friendly advice from some men that I was quite well acquainted with,—had known for years.
Q. Connected with the forestry service?
A. Yes.
Q. Who was the Arnold you mention?
A. I think they introduced him as from the legal department of the forestry department from Washington, D. C.

Cross-examination.

By Mr. KNAEBEL:

Q. Made a threat on your business, did they? Do you
453 refer to your business?

A. What, say?
Q. Did he say he would put you out of business?
A. He said if I allowed the forest service to bring suit against me that it would forever debar me from having the grazing privileges on the reserve.
Q. He didn't use the words "debar you from business," did he?
A. No, sir; a refusal of that permit would have that effect so long as the forest reserve is open, and is not fenced. If they could bring suit against me any time any one of my cattle strayed over

the forest reserve why I have got to quit the business, because I can not fight the forest service.

Q. You don't claim any ownership in this land within the reservation, do you?

A. As a citizen of the United States.

Q. You are no more interested in it than any one else, are you?

A. No, sir, not any more than any one that lives near to it.

(Recess until 7 o'clock P. M.)

FREDERICK LIGHT, being duly sworn testified as follows:

Direct examination.

By Mr. WARD:

Q. What is your name, Mr. Light?

A. Frederick Light.

Q. Where do you live?

A. On East Sopris Creek.

Q. What county?

A. Pitkin County, Colorado.

Q. How long have you lived there?

A. Twenty-eight years,—since 1880.

454 Q. What is your occupation?

A. Stock raising and farming.

Q. What has been your occupation since 1880?

A. Stock raiser and farmer.

Q. About how many acres have you in your ranch, under your own individual ownership and control?

A. About eight hundred and eighty acres.

Q. Is that the land described in the second paragraph of the eighth page of your answer?

A. Yes sir.

Q. The description there is correct?

A. Yes, sir.

Q. What do you raise on your ranch, Mr. Light?

A. Hay, oats, barley and potatoes.

Q. Are you a man of family?

A. I am.

Q. What size family?

A. I have eight children, four boys and four girls.

Q. Where were they born?

A. All born on Sopris Creek.

Q. On the ranch?

A. On the ranch.

Q. What, if any cattle have you been handling?

A. Commenced with a very small herd, and worked the herd up to about six or seven hundred at times.

Q. About how many cattle did you turn out on the unreserved lands last year, 1907, in the spring?

A. About four hundred.

Q. About how many did you turn out this year?

A. About one hundred and seventy-five.

Q. I hand you a photograph marked "Defendant's Exhibit A"; what is that a photograph of?

A. That is a photograph of Finley's ranch, I think.

455 Q. Do you know when that was taken?

A. Taken about the—well it was taken the 6th or 7th of May,—the 7th I guess.

Q. I hand you Exhibit B., a photograph; was that taken the same time?

A. Yes, sir.

Q. What is that a photograph of?

A. This road is known as the "Emma road" at the lower end of my ranch.

Q. By whom was that taken?

A. I think it was taken by Mr. Fred Johnson.

Q. Who else was present?

A. Mr. Ward and myself.

Q. I hand you Exhibit C. What is that a photograph of?

A. That is also the lower end of the ranch.

Q. Taken the same date?

A. Taken the same date.

Q. I hand you Exhibit D. What is that a photograph of?

A. That is a photograph of the lower end of my ranch.

Q. Taken what date?

A. Taken at the same time the others were taken.

Q. I hand you Exhibit E. What is that a photograph of?

A. This is a photograph of my ranch?

Q. And what other country in the bac*h*ground.

A. What is known as the "Light hill".

Q. Taken the same date, was it, by the same person?

A. Taken at the same time the others were taken by the same person.

Q. I hand you Exhibit F. What is that a photograph of?

A. Well this is taken close to my ranch. This is Mr. White's,—a portion of Mr. White's field.

456 Q. And the mountains in the background, what are they?

A. The background is the forest reserve close to the snow.

Q. I hand you Exhibit G. What is that.

A. A grazing permit.

Q. In blank?

A. In blank.

Q. I had you Exhibit I. What is that a photograph of?

A. That is a photograph of Mr. Shuttleworth's ranch.

Q. Taken the same date?

A. Taken the same date.

Q. I hand you Exhibit J. What is that a photograph of?

A. This is a photograph taken at the lower end of my ranch, showing the west line of my meadow land.

Mr. WARD: We offer exhibits A to J in evidence.

Mr. KNAEBEL: We object. Counsel for complainant can see no materiality in the exhibits.

Q. Mr. Light, how long have you been familiar with the range around your ranch.

A. Oh, in the twenty-eight years since I have been there.

Q. What is the extent of the range available to your cattle now?

A. My cattle ranges from Aspen to Carbondale.

Q. What is your usual range for cattle—the last two years for your cattle?

A. That is the usual ground they run on.

Q. What distance is it from the Williams Brothers ranch to Carbondale, approximately?

A. Let's see—it is about fourteen miles.

Q. How wide is the range, on an average, between Roaring Fork river and the forest reserve?

A. Well, five to six miles wide.

457 Q. Have you noticed the grass on that range this year?

A. I have, yes, sir.

Q. Have you made any special examination of the grass?

A. I did.

Q. For what purpose?

A. To ascertain whether it had been overgrazed, or whether there was a shortage of grass.

Q. What is the present condition of the grass now on what is known as the "Light hill"?

A. It is in good condition.

Q. What is the condition of the water as to being available for cattle upon the Light hill?

A. It is a well watered hill.

Q. Have you examined the grass in the territory between yours and the forest range to the west?

A. I have.

Q. What is the present condition of the grass?

A. It is good.

Q. What was the condition of the grass during the summer upon that range?

A. It has been good all this year and last year.

Q. What was the condition of the grass during the summer upon the Light hill?

A. Good.

Q. What evidence, if any, is there of over-grazing or over-stocking of the Light hill now?

A. It has not been over-grazed, nor is it over-stocked.

Q. Has it at any time during the year 1908 been over-grazed or over-stocked?

A. No, sir.

Q. What is the condition in reference to the range west of you, as to over-grazing and over-stocking?

A. It has not been over-grazed nor over-stocked.

458 Q. During what period?

A. I never knew it to be over-grazed nor over-stocked.

Q. Say what was the condition of the Light hill as to grass during the year 1907?

A. It was good.

Q. And what evidences were there of over-grazing or over-stocking?

A. There was no evidence of over-grazing nor over-stocking.

Q. Have you examined the grass in the territory northwest of you, toward the Crown country?

A. I have.

Q. This year?

A. Yes, sir.

Q. What is the condition of the grass?

A. It is good.

Q. What evidence, if any, is there of over-grazing or over-stocking this year?

A. There is no evidence of over-grazing nor over-stocking.

Q. What is the condition of the water upon the country northwest of you in the direction of Carbondale, or up to Carbondale?

A. It has good water-holes and creeks of various kinds everywhere.

Q. In the country commonly known as the "Crown country" what is the water there especially?

A. It is good; it has the Roaring Fork on one side, Sopris Creek on the other, couple of lakes and two springs.

Q. Now is there any grazing territory available to your cattle west of the Crown country and between that and Crystal river?

A. West of the——

Q. Crown country.

A. Yes, clean to Carbondale.

Q. What is the extent of the range from the Crown country proper over to Crystal river in miles?

459 A. I should think from Crystal river to the Crown it is about four miles. The Crown country is about four miles, and from the Crown, from the western boundary of the Crown it is about four miles to my range.

Q. You mean the western and eastern boundary?

A. Working towards the east.

Q. Have you any idea of the number of cattle that have grazed upon the territory just described by you, of the forest reserve adjacent, during the past year?

A. Have I observed?

Q. Have you any idea of the number of cattle that have grazed upon that territory during the past summer?

A. Oh, I think there is at least twenty-five hundred head of cattle been grazing in that territory.

Q. During the past summer?

A. During the past summer.

Q. Are you familiar with the number of cattle that have for years past been grazing——

A. On that country, yes, sir.

Q. Take about seven years ago, what were the number of cattle grazed upon this identical territory as compared with the present year?

A. Less cattle now, at present, that there was ten years ago.

Q. How many cattle, if you know, have during any one grazing season grazed upon the country described?

A. I think there has been as high as four or five thousand head.

Q. During that period was there any evidence of over-
460 grazing of grass?

A. There was not.

Q. How is the grass upon the range described this year as compared with the former years?

A. It is just as good this year as it has been.

Q. What is the character of the grass upon that range?

A. Blue-stem, bunchgrass, and grass that grows in scrub oak,—or green grass, I don't know the name.

Q. And you have made an examination during the last few days?

A. I have.

Q. What did you find the nature of the grass?

A. Found bunch grass eight or nine inches high, and blue-stem likewise in abundance.

Q. Any evidence of over-grazing?

A. No, sir, not in the least.

Q. What territory have you recently examined?

A. We examined at the lower end of my ranch, or East Sopris on the south side, and crossed over on the north side and went up the hills.

Q. What hill was that?

A. Fred Light hill.

Q. During that examination what, if anything, did you do in reference to looking for trails?

A. We went there—I went there with Mr. Shuttleworth, Mr. Finley and you, Mr. Ward, and we took several trails and followed them off until we come to the end of them,—come back and took another, and there is no continuous trial from my corner there to the forest reserve—never has been.

Q. Is there any continuous trail from any portion of that territory adjacent to your ranch, into the forest reserve?

A. No, sir.

461 Q. There are trails all through that country?

A. There are trails, plenty of them,—follow a trail a little ways and you get a cross-trail.

Q. You heard the testimony on the part of the Government about some bars being down near the corner of Mr. Finley's ranch. Please explain about that western line of your fence?

A. My cattle are kept in the meadow. I have an outside pasture about a quarter of a mile long and a mile and a quarter,—no, half a mile wide and a mile and a quarter long.

Q. To what point north does that extend?

A. North? Just about a quarter below my ranch; and this spring we were hauling fire wood and they went around the meadow, the south end of my meadow land, and went through the fence there a couple of, perhaps three places, I think,—would go up various gulches to get a load of oak, and come down.

Q. How far up would they go?

A. Oh, go half a mile or so from the house.

Q. Is that upon the forest reserve?

A. No, sir.

Q. Was it in the direction of the forest reserve?

A. It was west of the house, the forest reserve is a little southwest.

Q. Now you spoke of your meadow enclosure. Where is the western line of fence for your meadow enclosure?

A. It is about a quarter of a mile from my house west.

Q. Which way does it run?

462 A. Runs north and south, encloses one hundred and sixty acres.

Q. And what is the character of that fence?

A. Three wire and a pole,—a cedar post every fourteen feet.

Q. Did you ever open any gaps in that fence this spring and leave them down?

A. No, sir.

Q. What use did you make of your meadow lands during the months of April and May?

A. In April I fed the cattle there; I turned them out and left that gate open on the east side of a little northeast of my house.

Q. I will hand you Exhibit E. and ask you to mark with ink the letter "S" where that gate is that leads to the northeast.

(Witness marks as requested on Exhibit C.)

Q. I hand you Exhibit J., and ask you to mark with a long ink line the western fence which encloses your meadow lands.

(Witness does as requested)

Q. And how far does that come to the Emma road?

A. Comes to it, or nearly to it.

Q. On the 6th and 8th of May, 1908, when Mr. French and others testified as to seeing the bars near the Finley ranch down and the gaps in your outer western fence, what, if any, openings were there in the western line of fence enclosing your meadow?

A. Why on the 4th of May, I think it was, we had a snow storm, and lots of my cattle came off from that Fred Light hill into the feed lot.

463 Q. Through what place did they come?

A. They came out through this gate.

Q. On which side?

A. On the east and the north of my house, and I closed the fence, closed the gate up and fed the cattle; I closed the gate to keep other strange cattle that I didn't want to feed, that didn't belong to me.

Q. Now answer the question. What openings, if any, were on the west side of your feed lot which you have marked here with ink?

A. There was no opening, hasn't been,—wasn't any opening during the whole spring.

Q. What is the character of that fence?

A. It is a three wire and a pole.

Q. Where is the pole?

A. On top of the wire, fastened to the cedar posts, tight.

Q. The bars that were mentioned,—what is that opening ordinarily used for?

A. That is for the public to go back and forth, and we use it to go and get fire wood.

Q. Back and forth from what portion of the country?
A. From the road to the open range.
Q. In going from the Emma road west, how near does the lane lead by your dwelling house?
A. The lane passes my dwelling house, right in front of it?
Q. And how far from your dwelling house are these bars mentioned?
A. About a half a mile.
464 Q. What has been your experience as to whether those bars are up or down?
A. Why everybody that goes through there leaves them down.
Q. On about the 6th or 7th of May what use, if any, were you making of the western pasture, west of your meadow feed lot?
A. Why in my feed pen I had thoroughbred cattle and beef cattle and milch cows, and a few poor cows.
Q. What number?
A. I think there was twenty or twenty-two in all, and I could not let them out with the herd.
Q. Where is your feed pen?
A. My feed pen is located right at the house, at the barn,—feed yard.
Q. How close to this lane that you mentioned?
A. The lane is right on the—passes right by the corral.
Q. Now proceed to tell what use you made of that pasture?
A. I couldn't turn my cattle out with the herd in the meadow lot to the water, for the fact that it would gin my beef so, it would take flesh off of them, and I allowed them to go on this land and water at the upper end of the ranch, and we allowed them to stay there from eleven o'clock until four or five when they watered and grazed on the pasture, and some days they would go clean across on the upper edge of the fence; I believe they crossed it once or twice and we would get them in very often and feed them.
Q. And how near to the end of these bars would they go?
A. They would go through the bars, I think there was nothing to stop them; when we were hauling wood in the spring they
465 might have gone through the bars a little ways.
Q. At that period of the year what was the condition of the forest reserve as to grass?
A. There was no grass on the forest reserve.
Q. Mr. Light, have you ever during the year 1907 or 8 turned out any of your cattle in the direction of the forest reserve?
A. I have not, no, sir.
Q. Where have you turned your cattle?
A. I have turned them out on the north side and east of my ranch on the Fred Light hill.
Q. At what point marked on Exhibit E?
A. Where the letter "S" is now.
Q. Whose land is immediately outside of that enclosure?
A. My land.
Q. How much land have you there unenclosed and unfenced?
A. I have seventy-five or eighty acres.

Q. Immediately adjoining your land to the north what land is it?
A. To the north?
Q. Yes.
A. Immediately, it is government land.
Q. Unreserved government land?
A. Unreserved government land.
Q. What is the nature of the hillside at the place you turn your cattle out?
A. Why it is rolling?
Q. What is its nature with reference to accessibility?
A. Oh it is easy getting to.
Q. Are there any fences there to interfere?
A. No fences whatsoever.
Q. And that was where you turned them out in the spring of 1907?
A. 1907, yes, sir,—1908 also.
466 Q. The cattle that you turned out in 1908, how many of those constituted a part of your herd that you had in 1907?
A. Why just those thoroughbred I believe I reserved, and I kept them under fence nearly all summer in the pasture.
Q. Where did you get your 1908 herd?
A. I bought from a neighbor by the name of Stauffacher.
Q. And from whom else?
A. From H. M. Shuttleworth.
Q. Where did the bulk of them come from?
A. Mr. Stauffacher.
Q. Mr. Light, what statements have you made, if any, as to your intention to turn your cattle out upon the forest reserve?
A. My intention to turn them on the forest reserve?
Q. Yes.
A. I didn't want my cattle to go on the forest reserve; I never stated that I wanted them to go there.
Q. What efforts have you made to keep them from going on the reserve?
A. Drive them away as far as possible.
Q. You have not, I suppose, herded your cattle?
A. No, sir.
Q. Mr. Light, I hand you Exhibit D. What portion of your farm does that represent?
A. This represents the north end.
Q. That fence crossing the photograph, what fence is that?
A. That is my extreme north pasture fence right here.
Q. Where the willows appear in the foreground what creek is that under those willows?
A. East Sopris Creek.
Q. I hand you Exhibit C. What territory is that?
A. That is the north end of my ranch.
Q. It is the same ground?
A. Nearly the same ground.
467 Q. Just a little bit different view?
A. Yes, sir.

Q. Mark with a pencil the approximate location of your extreme western fence on that Exhibit C.

(Witness marks with a pen as requested.)

Q. Through what character of the country does the extreme westerly fence run?

A. It is through scrub oak—sage brush.

Q. As to the hillside?

A. Oh, it is a gradual slope.

Q. What portion of the hillside is it on?

A. The west hillside from the ranch.

Q. As to being near the top, or near the bottom, which is it?

A. It is at the bottom of the hill, it is just off west of my meadow land.

Q. This is not the fence that enclosed your meadow land?

A. No, sir.

Q. I hand you Exhibit A., which you have identified as being a portion of the Finley ranch. Mark with a pen approximately the fences that run up Sopris Creek,—the western fences.

A. Well, I can not see the fence there, but it is up above here.

Q. You can give the approximate location of the fence, can't you, knowing the location?

A. It runs up the creek south.

Q. Mark on the photograph as nearly as you can about where the fence would be, in your opinion?

A. (Witness marks on photograph) Something like that.

Q. Running over into the forest reserve?

A. Towards the forest reserve.

468 Q. Or running down Sopris Creek?

A. Running up Sopris Creek.

Q. Running up Sopris Creek?

A. Yes.

A. Mr. Light, are you very familiar with the marking of photographs?

A. I don't know.

Q. You have marked here a fence which appears to be about a half a mile from the creek, or a mile from the creek.

A. Well, it is about a half a mile.

Q. How far do these fences continue up Sopris Creek in the direction of the forest reserve?

A. Oh, they continue,—oh, a couple of miles, I should judge, and perhaps two miles.

Q. From what point, from Finley's ranch?

A. From Finley's ranch.

Q. In reference to the territory west of you, where does the grass come out earlier in reference to the territory west and the Light hill?

A. Comes out earlier on the Light hill.

Q. For what reason?

A. South exposure, and grass springs up there; we hardly ever have any snow on that hill.

Q. How long has it been your custom to utilize the Light hill?

A. It has always been my custom since I have been there in business.

Q. What period of years?

A. Twenty-eight years.

Q. At what time?

A. I generally turn out in April.

Q. Why do you turn out there so early as April?

A. It is an early side hill, that is all,—to avoid feeding hay.

Q. What is the condition of the grass throughout the forest reserve at that time?

469 A. Oh, it is covered with snow, the forest reserve is, at that time.

Q. And was that your practice before the forest reserve was established?

A. It was.

Q. Prior to the establishment of the forest reserve what practice, if any, did you have in reference to handling your cattle later in the summer?

A. Why the cattle came down there and wintered partly on this hill?

Q. You say later in the summer?

A. Yes.

Q. What did you do with your cattle?

A. They drifted down on this hill and grazed there.

Q. What, if anything, have you done in reference to driving your cattle upon the higher lands?

A. In former years we used to—neighbors used to get together and take the whole bunch of cattle up there on what is now known as the forest reserve, to save the lower range for winter feed and late fall feed.

Q. Would the cattle stay there?

A. Oh, we have driven them; they would come down and we would drive them back.

Q. Have you changed your method of handling your cattle as to turning them out in the spring, since the establishment of the reserve?

A. No, I turn them out at the north end of my ranch—north and east of my house, on the Light hill, but I don't drive them up toward the forest reserve any more.

Q. What is the character, or topography of the Light hill as to accessibility?

A. Oh it is an easy hill to graze, it is rolling.

470 Q. Is it difficult for other purposes?

A. No.

Q. What, if anything, do you know of wagons being upon that hill?

A. You can haul a wagon anywhere upon it,—haul cedar posts upon it.

Q. Where may cattle, and where do your cattle graze and drift from the Light hill?

A. They drift everywhere towards Aspen and towards Carbondale. These cattle that I turned out last spring drifted in the Crown; most of them are in the Crown now.

Q. What is the character of the ridge immediately west of your ranch lying between your ranch and the forest reserve, as to the growth upon it?

A. West?

Q. Yes, west of your ranch.

A. Why the grass is good west of the ranch.

Q. As to the timber growth?

A. There is no timber west of my ranch.

Q. Is there any kind of growth there otherwise than grass?

A. Oh, there is scrub oak there.

Q. What is the nature of the scrub oak?

A. Oh the scrub oak grows in clumps here and there.

Q. What is the character of that, as to whether it would be easy for cattle to pass up over those hills into the forest reserve in that direction?

A. Why, cattle turned on the Light hill, as they go to water they would naturally drift toward the Crown or towards Emma, down the creek.

Q. What is to prevent them from going in a direct southwesterly direction into the forest reserve?

471 A. There is a cliff there, there is a little steep hill and they get under this rim and they drift down the river.

Q. What is the character of the country between your northwest corner and the northeast corner of the forest reserve?

A. Northeast corner——

Q. I hand you Exhibit A., attached to the answer, and ask as to the character of the country between the northwest corner of your ranch and the northeast corner of the forest reserve?

A. What is the character?

Q. What kind of land is there lying between there?

A. Why the cattle——

Q. What kind of land, I mean?

A. Oh, kind of rolling, good grazing land.

Q. How many ridges are there in between that and the forest reserve?

A. There is this rim that goes west there at the lower end of the place; there is ridges there once in awhile.

Q. Some of the cattle have drifted upon the forest reserve?

A. I never saw any, Mr. Ward.

Q. You have been informed they have been there, have you?

A. Yes, sir.

Q. Is it your intention that they should go there?

A. No, sir.

Q. In going there the way the cattle ordinarily travel, how far would they have to travel from your northeastern gate to get upon the forest reserve?

A. Well, of course if they got behind the fence, happened
472 to go behind the fence, they would reach the reserve I guess in five miles, or four and a half. If they drifted below this ridge they would have to travel about nine miles to reach it.

Q. What is to prevent them from going right straight across in a straight line?

A. They don't—well, this rim has a tendency to throw them below.

Q. Has the nature of the scrub oak and brush anything to do with it?

A. Oh, es, there is a ridge there that they don't see the grass; they don't like to graze and they drift down the river and they come to what is known as "Middle Soper," and I presume some of them drift up Middle Soper.

Q. What is the nature of the grass on these high ridges in the months of April and May?

A. Why, there ain't much grass on them.

Q. Would that have any tendency to attract the cattle away?

A. No. On the ridges you mean?

Q. Between your corner and the forest reserve.

A. There is nothing there that I can see that would induce the cattle to go towards the forest reserve.

Q. As a matter of fact, from your twenty-eight years' experience in that country, how do the cattle go from your northwest corner over towards what is known as the forest reserve; what direction do they take, as you have described?

A. A few of them I presume goes up Sopris, and the
473 others drift down to Middle Soper and go up it, and some drifts further and get on West Soper and get on the reserve.

Q. Mr. Light, you have refused to take out a permit to graze your cattle?

A. Yes, sir.

Q. Why have you done so?

A. Why, I believe it is unjust, unconstitutional: I believe that it is taking a right away from us that they give all the people of other states, and believing as I do I could not take out a permit.

Q. Are there any other motives which induce you to refuse to take out a permit?

A. The farmers and stock men of that locality got together and held meetings, and we signed an agreement not to take out a permit.

Q. With what end in view?

A. In order that we might get a decision from the court on the subject, believing they had no authority to levy a tax on the people. Our meeting was to the effect that we should aim to get a hearing before some court, and get a decision authorizing the Government to make this collection.

Q. And what was determined upon by you cattle men in the event that the Government should win its contentions?

A. Well, we agreed to pay as soon as they could get a decision in their favor,—willing to pay, but not until then.

Q. Mr. Light, I hand you a copy of the answer, to which is attached a plat marked "Exhibit A." Have you examined that plat as to the section numbers?

A. I have.

474 Q. And the location of your ranch?

A. Yes, sir.

Q. And the dotted lines marked as fences?

A. Are correct.

Q. And the general course marking East Sopris creek—how is that?

A. That is perfectly correct.

Q. So that the map as attached to the answer gives an approximately correct statement of the situation there?

A. Yes, sir.

Q. You spoke of being willing to pay the fees in case the Government should—in case the court should decide that the Government should enforce the rule for herding cattle in conflict with the State laws. What is the extent of your cattle business at the present time?

A. Why, I control one hundred and seventy-five head.

Q. How does this compare with your former herds?

A. It is not one-fourth of what I have been running.

Q. What reason have you for cutting the herd down to the present number?

A. I don't know how this is going to turn out, and it might be denied the privilege of ever using the range around there.

Q. And what effect, if any, does the strict enforcement of the present rules and regulations have upon your cattle business?

A. It has great effect.

Q. In what particular, financial or otherwise?

Mr. KNAEBEL: It will be understood that all of this line of testimony goes in under objection. I don't want to encumber the record.

475 Mr. WARD: That is all right.

Q. Explain.

A. Why if the Government is going to arrest us every time a cow crosses over on to the forest reserve we had better get out of the business.

Q. Why not herd your cattle?

A. We cannot herd cattle there and make a success of the business.

Q. Why not fence your lands?

A. Fence our lands?

Q. Yes, sir.

A. We cannot fence them—don't own any land that will support any great amount of cattle.

Q. Where must the cattle run in order to——

A. Must run on the public domain.

Q. Where they have been running right along?

A. Where they have been running for years past.

Q. Mr. Light, what is the condition of the cattle now upon the public range in the neighborhood of your ranch?

A. In good condition.

Q. What effect, if any does the placing of salt upon the higher portions of the forest reserve have, in getting cattle to that territory?

A. The object of putting salt high, I presume, is to hold the cattle up there.

Q. What effect, if any, has it upon your cattle straying upon the forest reserve?

A. I presume they go there, some of them, on account of the salt.

Q. What effect would it have in inducing them to remain
476 there?

A. It would hold them there like other cattle.

Q. What is the result of large numbers of cattle being driven upon the forest reserve through the territory where your cattle are?

A. Why, the result has been up there in a certain place, that where cattle were driven away back high, they eat a good deal of salt, and eat all the grass around there, and still stay there and eat piñon wood; I know of one place sixteen or seventeen head of dead cattle within the space of a quarter of a mile; and if the salt was put low, why they would simply go up there to get grass and come back, and wouldn't be compelled to eat that poison wood.

Q. Well, why do not your cattle stay on the Light hill?

A. The cattle drifts in all directions; I don't think that you can keep cattle, unless you herd them, anywhere.

Q. The fact that your cattle are reported to have been found upon the forest reserve, is that due solely, in your opinion, to the drifting tendencies of the cattle?

A. Yes sir.

Q. Have you driven them up there?

A. No, sir.

Q. Has anyone else driven them up there?

A. No, sir, not to my knowledge.

Q. To your knowledge?

A. No, sir.

Q. Does the fact that large herds have been driven up there in the same territory with your cattle have any effect upon your cattle?

A. Yes, I presume when they drove the herds back that they took some of mine with them.

477 Q. But you don't know of your own knowledge?

A. No, I didn't see them.

Cross-examination.

By Mr. KNAEBEL:

Q. What precautions have you ever taken to prevent the cattle from going upon the reserve?

A. Why, I have told my riders to be sure not to allow any of

them to go there, if they saw them to turn them in the opposite direction from the reserve.

Q. To whom did you tell that?

A. Oh, my boy that works for me.

Q. What is his name?

A. Leo.

Q. When did you tell him?

A. Oh, various times.

Q. What year?

A. 1907 and '8.

Q. Sure you told him in 1907, are you?

A. Yes, sir.

Q. And this year again?

A. Yes, sir.

Q. Why did you not remove the cattle from the reserve when Mr. French notified you last year?

A. I agreed with him that he should give me ten days, and we entered into an agreement with the Government that we should have a test suit,—wasn't compelled to take them off.

Q. You knew that they were up there this year, didn't you?

A. Very few, Mr. Knaebel,—very few.

Q. You knew there were some of your cattle upon the reserve this year?

A. Personally, no; I was told there were very few.

Q. You testified that this case is one that you are acting as
478 a defendant in for the purpose of testing the question whether you are under any obligation, or your neighbors are under any obligation to take precautions to keep their cattle off of this reserve, when they haven't secured permits; is that correct?

A. Well, we are testing the legality of the fact whether they have the right to collect a fee. That is my understanding of it.

Q. What is your position now, that you have a right to have your cattle upon the reserve?

A. Well, no, my position is that I don't want to pay the fee.

Q. Well, can you give us some idea of what your standing now is, and your attitude, as to whether you believe you have a right to have your cattle on that reserve if they go there, without having had any permit?

A. Well, I know that if I drove them on the reserve that it would be just like driving them into a man's enclosure, that I would be doing something I hadn't ought to do, I know that; but there is good grass outside of the reserve, and I would just as lief, and rather, they would remain outside.

Q. You used to drive your cattle upon this reservation before any restrictions were imposed by the government, didn't you?

A. Yes, sir.

Q. And you also salted up there in years past?

A. Well, I don't think we put salt in the reserve very much.

Q. Well, now, what is the fact about that?

A. We did put salt up at the Hay Park, but that is the
479 only place; I presume that is in the reserve.

Q. Those cattle that you owned last year, and which were

mentioned in the bill of complaint as it first was filed, were cattle that had been in that reserve for a number of years past, were they not?

A. No, sir, they were a new bunch of cattle bought from up towards Aspen, known as the "Stapleton" cattle and "St. Clair" cattle.

Q. Did you not state in Denver in Mr. Ward's office in my presence last spring that a portion of that herd were cattle that had been there and acquired the habit of going upon that reservation?

A. I don't remember of making such a statement.

Q. Now you read the original bill of complaint in this case, didn't you, after it was filed?

A. Yes, sir.

Q. Before it was filed?

A. Well, I read it as soon as Mr. Ward sent it to me, yes, sir.

Q. And you agreed and assented to its terms as stating the fact—excepting the adjectives and adverbs, descriptive of your intention?

A. Yes, sir.

Q. And after the demurrer was overruled by the court you filed an answer which you verified and swore to, which is in very material respects different from the statement of facts which was agreed upon; is that correct?

A. There was no statement of facts agreed upon, was there, Mr. Knaebel?

Q. I am asking you; I certainly thought there was?

A. You say you thought there was?

480 Q. I am asking you, now, you are testifying.

A. That was all our trouble; if we had agreed to the statement of facts we would have had a hearing long ago.

Q. Was there anything in that complaint, Mr. Light, that you made an objection to, before it was filed?

A. Why yes, they accused me of causing my cattle to go on the reserve, and I didn't; of course I objected to it.

Q. Didn't you admit that you caused them, in the sense that you turned them loose, when you knew they would go there because of the conditions of grazing and water, and topography, and habits of the cattle?

A. I didn't agree that I caused them to go there.

Q. Didn't you agree that you caused them to go there in that way, and to that extent?

A. I didn't understand it that way, Mr. Knaebel.

Q. Now you are not standing the expense of this defense, are you?

A. Not alone.

Q. Who is standing it?

A. Why, the stock men of the state.

Q. What do you mean by that; what stock men?

A. The Association.

Q. What is the name of the Association?

A. Why, the State Stock Association, the local Association are going to contribute towards defraying the expenses.

Q. You don't want to have it understood, do you, that that Association, in the defense of this suit, represents the views of all of

the big stock men in the state on this question of forest reserve?

481 A. Not all, but a majority of the stock men of the state.

Q. You say that your objection is to the fee. The fee is how much?

A. Twenty-five cents per head.

Q. Is that your only objection?

A. Well those rules I couldn't conform with.

Q. And did you testify—I don't want to misconstrue you, but did you say that the payment of the fee would result in depriving you of all the profits of the business?

A. Oh no. All the profits?

Q. Yes.

A. No, it is an additional hardship, I said.

Q. You don't mean to say, then, that the fee of twenty-five cents a head would drive you out of the stock business?

A. No, it with the rules make it so bunglesome that I would rather be out of it, be in something else.

Q. What rules do you refer to?

A. The rules that it is necessary for us to keep our cattle off the reserve, or keep them in a specified space; we could not do that.

Q. Have you ever been requested?

A. No, but the rule says "if necessary"; we would have to conform by the rule.

Q. So that it is your fear of the hereafter again, as was testified by another witness, that induces you to defend this case, is it; it is not the fee so much as the thought that you might in the future be compelled to do something that you couldn't well comply with; is that the idea?

A. Yes, that is part of the idea.

Q. Now you don't claim any ownership in any of the lands

482 within this reservation, do you?

A. Only as a citizen.

Q. The same ownership that I have, or that Senator Ammons or Mr. Ward has?

A. Why I presume so; only that I live adjacent, I believe I have a little better right than those that live away off.

Q. When those cattle go into the reserve they go upon land owned by the United States, don't they?

A. Yes, sir.

Q. No controversy about that, is there?

A. No, sir.

Q. In 1907 did you drive any of your cattle upon the reserve?

A. No, sir.

Q. Yet a large number went there, didn't they?

A. 1907? Why Mr. French told me he counted one hundred and nine, that is all I know; we didn't gather them off from there, though, when we gathered them they were off the reserve.

Q. You knew they were on the reserve in 1907, didn't you?

A. I didn't see them there; Mr. French told me and I presume he told me the truth.

Q. When you turned them out you knew they had been there in previous years?

A. They had not been there in previous years.

Q. None of them?

A. Very few; I had a very few cattle and they were blooded stuff that I kept over.

Q. In 1907, I am talking of?

A. 1907, yes; and these were cattle that I bought, that came from other sections, and when they were gathered in the fall they were gathered close to Aspen, most of them,—at least one hundred and fifty of them.

483 Q. Didn't you know, as a matter of fact, that cattle of that entire neighborhood had not fed, not gone up into this reservation?

A. Cattle of the neighborhood?

Q. Yes, sir.

A. They go there a little, Mr. Knaebel.

Q. You say "a little", what do you mean by that?

A. Why I think that some of them drifts up there of course, but not over—I don't think over ten per cent. of them drifts on the reserve, that is, the entire season.

Q. Well, let us eliminate the entire season, and so find out what percentage go up there at any time in the season?

A. Well, there is sometimes during the season quite a number up there, but they drift every direction, east and west, north and south.

Q. You have heard what the witnesses have testified here today about the preference of cattle for fresh grass, and for places where they can get water readily without going far for it?

A. Yes, sir.

Q. Now, then, what do you say about the tendency of cattle to drift from that lower country, to go from that lower country up into the reservation as the season gets hotter and the grasses down below begin to dry up?

A. We have no hot season up in the high altitudes; all of that country in there is high, we have no warm weather, unreserved or reserved.

484 Q. Then, in your opinion, the cattle don't go there, they stay around on the lower range?

A. Some of them do and some do — go up there on the reserve.

Q. What did you mean by implying that every time a man's cow might get over the line that he would be arrested? Did you ever hear of anybody being arrested under those circumstances, by the Government officials?

A. Why I know that they got a complaint against Mr. Zimmerman and against Mr. Luxum—Joe Luxum; they were going to have five or six at least in the White River country; that is what I mean that if our stuff goes on the reserve we shall be prosecuted for it.

Q. Not arrested in this case?

A. I was notified to take my cattle off, and I guess we would have been if they hadn't agreed to give me a test case.

Q. Do you know the difference between a criminal and a civil suit?

A. Yes, sir.

Q. What makes you think that Zimmerman was ever prosecuted with a warrant if there was any likelihood of his arrest?

A. Oh, well, but didn't they have a complaint, haven't they sued him for damage, for trespassing upon the reserve, or wasn't that until recently they were going to keep the suit back until this case was determined.

Q. You are very positive in your answer that your cattle each year drifted toward Aspen and Carbondale from Light hill. Now what have you got to say about the direction of the forest reserve?

A. Why there were a few that drifted on the forest reserve.

485 Q. You drove your cattle up there in 1906, didn't you?

A. Yes, sir.

Q. You drove them up there every year before that, for a great many years?

A. Yes, sir.

Q. You spoke about a snow storm last May which caused your cattle to get over the Light hill district, or country around to the west side of your ranch?

A. They came through the gate on the north and east side of my ranch.

Q. And got around to the west side, didn't they?

A. No, sir.

Q. None of them?

A. Only those that I had inside of the pen that went to water and got in there a little, those were put in there very often.

Q. How did your cattle get on the reservation this year?

A. I don't think there was but very few on the reservation this year.

Q. Those that got there, how did they get there?

A. Well, perhaps they went up Middle Soper; I don't know as any got there, myself, this year—I didn't see a one.

Q. Did you look?

A. I was up there.

Q. Did you look?

A. Yes, sir.

Q. Did you go there for that purpose?

A. Yes, sir.

Q. Did you go there for the purpose of bringing them back if they were there?

A. I would have, yes, sir. I would have taken them home.

486 Q. You are not a very good champion of the rights of the people, are you, if you would do that, when you are sitting in this case to test the right of the Government to restrict the grazing of non-licensed cattle up there, and you are contending for the application of a state fence law? I don't quite understand what your attitude is, Mr. Light. In one breath you say this is all unconstitutional, and that you are going to stick them out, you are backed by a Stock Association, you represent the majority of our

stock men, and in another you say it is your purpose and desire to prevent your stock from going up there, that you have got directions to that end, and expressly go on the reserve for the purpose of driving your cattle back. Now please explain what your attitude is for the future in regard to this matter?

A. Well, I know that if I drive my cattle in your field that you have got recourse; I know if they got there of their own accord why you have no recourse, and I don't want my cattle to go upon the reserve with my consent.

Q. You say that if the Government's contention is sustained in this suit you will take out a permit. Did you testify to that effect?

A. Yes, sir, I did.

Q. Suppose the range of the forest reserve were fenced in, would you take out a permit then?

A. No, I would not take out a permit if it was fenced.

Q. Didn't you state to me in the presence of Mr. Ward
487 in his office last spring, or early in June, that you would be very glad to take out a permit?

A. To put inside of the fence?

Q. Yes, sir.

A. Oh yes, if you should grant me that, if I had the exclusive use of that forest of course I would be willing to pay something for it, yes.

Q. How far did you drive your cattle in 1908 when you turned them out?

A. Why, I just opened the gate and they went on the hill.

Q. Just as you have done every year before?

A. Yes, sir.

Q. One more question. What was your object in past years in driving your cattle upon what is now the reserve?

A. So as to protect the lower feed, so that our cattle would stay out longer in the fall.

Redirect examination.

By Mr. WARD:

Q. Mr. Light, Mr. Knaebel has recalled to your attention a conversation had in my office last spring preliminary to Mr. Knaebel's preparing the complaint. You recollect that conversation?

A. Yes, sir.

Q. When did you see, if at all, a copy of the complaint prepared by Mr. Knaebel after that?

A. I didn't see it.

Q. When did you first see it if you recollect,—the complaint?

A. I think when——

Q. Do you remember when you first saw that complaint, or any draft of it?

A. Why, after you sent it to me. You sent me this,
488 didn't you?

Q. Was that after it had been filed, or before the suit had been brought?

A. I think it was after.

Q. Did you ever have a conversation with me or Mr. Knaebel after the time of that first conversation with Mr. Knaebel?
A. With you and Mr. Knaebel?
Q. Did you ever have a conversation with either me or Mr. Knaebel up to the time of the filing of this complaint?
A. I don't think so.
Q. Did you communicate with me as to the contents of the complaint from the time of that conversation until after it was filed?
A. No.
Q. Did you know what was in the complaint prior to its being filed?
A. No.

Recross-examination.

By Mr. KNAEBEL:

Q. Did you not agree with the meeting I refer to, and hadn't you agreed previously to that time with the representatives of the Department of Justice that it was true that when you turned your cattle loose last year in 1907, you knew that a proportion of those would go upon the reservation?
A. Well, I know that cattle some of them do go there on the reserve.

Redirect examination.

By Mr. WARD:

489 Q. Did you agree with the Department of Justice or anybody else that your cattle would go upon the forest reserve?
A. No, sir.
Q. Is it a fact?
A. No, sir.
Q. At any time?
A. No, sir.
Q. You spoke about threats of arrest, in cross-examination?
A. Yes, sir.
Q. Have any citizens of Colorado been arrested for letting cattle go upon the forest reserve?
A. I understand that there was.
Q. Who?
A. Andrew Norrell, for one.
Q. Where does he live?
A. North Park, I believe.
Q. Were any threats of any character made to you by officers of the Forestry Department in connection with your refusal to pay the grazing fees and taking out permits?
A. Why Mr. French told me if I didn't take them off or pay the fee that I would be reported as a trespasser and suffer the consequences.

Recróss-examination.

By Mr. KNAEBEL:

Q. You don't know the facts of the Norrell case, do you?

A. I know that I had a talk with Norrell; I know that he read the paper that he had been hounded by the Government or somebody else having trouble with them.

E. M. AMMONS, being duly sworn, testified as follows:

Direct examination.

By Mr. WARD:

490 Q. What is your full name, Mr. Ammons?

A. E. M. Ammons.

Q. Where do you live, Mr. Ammons?

A. I live in Douglas County.

Q. How long have you lived in the state of Colorado?

A. Something more than thirty-seven years.

Q. Were you born here?

A. No, sir.

Q. In what portions of Colorado have you lived, Mr. Ammons?

A. I have lived in Jefferson and Arapahoe and Douglas; I have lived in——

Q. Have you lived in mountains as well as plains?

A. Nearly all the time, most of the time I have been in the mountains.

Q. What is your business, Mr. Ammons?

A. I am a stockman.

Q. How long have you been in the stock business?

A. Continuously about twenty-four years.

Q. How large a herd of cattle have you handled from year to year?

A. I have had several bunches, as a rule,—got less now than I have had for a good many years; have had as high as four thousand head at one time.

Q. In what portions of the state have you run these cattle?

A. Douglas, Jefferson, Park and Teller counties.

Q. In what portions of the state in what character of country in reference to being timber covered, or mountainous, or prairie?

A. All the cattle I have had on prairie has been in pasture?

Q. And you have, you said, handled cattle in the timber region?

A. Yes, sir, mostly.

491 Q. Mountains also?

A. Yes, sir.

Q. What official position in reference to Stock Associations have you held or do you hold?

A. Why, I am simply a member of the State Association, belonging to some of the committees. I have been President of the State Association, and several local Associations. I am with the Stock Show Association,——

Q. What——

A. I am President of that at the present time.

Q. What attention, if any have you paid in reference to the grazing matters in the state.

A. I have been connected with this controversy as a member of the local or State Association since the first reserve was taken possession by the old South Platte Reservation on Plum Creek, and it is now combined as a part of the Pike's Peak Reserve.

Q. What missions, if any, have you undertaken in reference to these matters, to Washington?

A. I was a member of the committee that went down to take an appeal from the Forester, before the Secretary of Agriculture and before the President.

Q. What official positions have you held in the state of Colorado in your county?

A. I am Clerk of the District Court, have been a member of both houses of the legislature—was Speaker of the House.

Q. What positions have you held within your county other than what you have narrated?

A. Only Clerk of the District Court; I never have been a candidate for anything else.

492 Q. What study, if any, have you made in reference to forestry matters?

A. I have taken an interest in that ever since I was old enough—ever since the reserves were established, I have—as I say I have been somewhat connected with our local Association and members of it, in the controversy over the rules and regulations, and have paid what attention, and learned what I could about the matter; I have always taken an interest in the preservation of the forest all my life. I think I am one of the very first ones who ever attempted to get the forests at the head of the Platte river protected from destruction.

Q. Has your interest led you to make any investigations or study on the subject?

A. Yes, sir.

Q. To what extent?

A. Well, to what extent I was able to, with what reading I could do, and what investigations and inquiries I could make.

Q. What opportunities have you had to observe forests throughout the state?

A. I have been riding the range there nearly all my life, and I have learned what I could from observation of natural conditions and circumstances.

Q. You have had this matter in view for years, have you?

A. Yes, sir.

Q. And made a study of it?

A. Yes, sir, I think it is a very important matter in this western country.

493 Q. Have you made any investigation or study, outside of the state of Colorado, of forest conditions?

A. Only in one place in New Mexico.

Q. Have you had any experience with forest fires in Colorado?

A. Yes, sir.

Q. Please explain the conditions that make forest fires more frequent?

A. Well, it has been my——

Mr. KNAEBEL: Objected to as immaterial.

(Witness continuing:) —experience that a great many of our forest fires have been caused by lightning in the early day when the grass wasn't eaten off, and there were accumulations of years of dry matter; in a dry time when a fire started it was almost utterly impossible to stop it because it would go from one patch of timber to another,—couldn't head it off.

Q. What effect does the grazing of cattle have for the protection of the forest against fires?

A. I think it is the best protection; the grazing of livestock is probably the best natural protection that we have.

Q. What, if any, experience on that line did you have outside of Colorado?

A. In the west of Embudo on the Rio Grande there are some large tracts of timber on which I made a report some five or six years ago, and in going over those lands I saw a number of fires in the forest, the best timber I have ever seen in this western
494 country, and they wouldn't spread anywhere, and upon investigation I discovered there was nothing to carry any fire along, they had been pasturing sheep in there, they informed me, a hundred years—finest timber I have ever seen in my life.

Q. Are you familiar with the rules and regulations of the forest service?

A. Pretty well so; I don't know how much they have been changed this year; I have looked them over but not very carefully; they are somewhat changed, I believe, from a year ago.

Q. Have you made any special study of the rules and regulations of former years?

A. Yes, sir.

Q. Have you discussed these rules and regulations with Government officials?

A. Yes, sir.

Q. With whom?

A. With every supervisor, I think, unless it is the very last ones that have been in charge of the reservation, now the one reservation—Pike's Peak, and with others,—with Mr. Pinchot and Mr. Potter; with Mr. Barnes and with the President and with Secretary Wilson.

Q. What effect upon the forest has the enforcement of these rules and regulations had, as to the protection of the forest?

Mr. KNAEBEL: That is objected to as calling for the conclusion of the witness concerning a matter that he is not shown to be competent to testify about; and secondly, because it is immaterial to any issue in the case.

A. I don't consider that the rules in the reservation in which I am acquainted—I am not personally acquainted in all of
495 them—have assisted very materially in the protection of the forests.

Q. What effect have these rules had upon the grazing in the forests?

A. They have put them under a course,—a different system from what it was before, but take it in our reservation the conditions there in the last three or four years have been worse than they were ever since I can recollect.

Q. What has been your observation in reference to whether or not cattle grazing in the forest, injure the forest?

A. They do not; I never in all my life have but one time seen cattle eating pine or spruce buds; I recollect one winter, in the hard winter of '85 out on the divide seeing two or three head of cattle reaching up—saw cattle nibbling at the pine leaves. I have never seen where cattle destroyed the undergrowth of pine or spruce.

Q. What effect would over-grazing of a forest have,—cause an injury to the re-forestration?

A. Well, as to the re-forestration I think it is an open question of how to start trees; I don't believe anybody knows. I know of one instance, and we tried to get some of the forest officials to go there and look at it, on the Floyd Hill road, one of the oldest roads in Colorado, going from Denver and Idaho Springs to Georgetown, I found where that road has been changed years ago, and in the roadway, and not on either side, it has grown up as thick with pines, as thick there as they can grow; whereas, on either side there is no growth whatever, nothing growing, nothing coming up,—just in the
496 roadway where it was tramped. It is a matter that I have heard a great many remark about. I was over there this summer; I go over nearly every year. I think it is an utter impossibility for anybody to say certainly what is the best condition to get a growth of trees started. I know from observation that trees don't start very readily where there is a sod grass; I have noticed that all my life here in my travels when I was over the mountains. I don't think any one yet knows how is the best way to start trees a growing in this country where fires have occurred. When I was a boy, trees now probably that high (indicating) started reforestration, some a little higher, some places they are not yet thick enough; some places they are too thick. A great deal depends, I think, on how much stuff there was in the ground and how dry it was when the fire occurred, because there are instances I have seen myself where every particle of the soil was burned up, and that this started very slowly, and I know there is very little change in thirty-seven years; in one or two places in that county it has occur-ed; it looks as though it couldn't have been over two or three years' growth; there is very little change that has occurred in all that time in the growth.

Q. What effect as to fires would the close grazing of the forest range have?

A. Well, close grazing of the forest reserves would assist in protecting the forests against fires.

Q. And the same sort of grazing, what effect would that have upon the reforestration, or the young growth.

497 A. I don't think anyone can tell yet.

Q. What is your opinion?

A. I am very much in doubt about it; it certainly won't hurt any growth there is there; whether it will benefit, or whether it will promote it or not, I don't know.

Q. What has been the general condition of the cattle business for the past five years as to whether or not it is profitable?

A. It has not been profitable the last five years.

Mr. KNAEBEL: I want to make objection to that question, and to all questions along that line, on the ground that they have no legitimate bearing upon any issue in this case.

Q. The fact that the cattle business has not been profitable, would that bear any weight in the question of grazing permits, and rules and regulations, and herding cattle?

A. Certainly, every restriction you place upon cattle why it has that much more of an adverse effect,—more discouragement.

Q. What would be the effect upon cattle business in the vicinity of forest reservations *of* there should be a strict enforcement of the rules and regulations?

A. It would be very detrimental.

Mr. KNAEBEL: Objected to on the same ground.

Q. What effect, if any, have you noticed?

A. Well, I have noticed herds being reduced and men going out of business, and loath to go into business, and unable to raise money to go into business. A great deal of cattle business in Colorado is done on borrowed capital. In order to raise money to buy
498 cattle, a man must show that he has a place to take care of them during the period which they allow him to hold those cattle, and they must be assured of that during that time.

Q. Well, are they not assured of that under the permits allowed?

A. No, sir, they have been issued only for a year. I understand they are issuing them now for a longer time, but the terms of the permit are such that if the forest officers wish to do so they can revoke them at any time. The rules and regulations as applied to the reserve for which I did business for them was utterly impossible for any man to live up to—I don't know, in some of the other reservations it may be possible—and they wouldn't change them, no difference how many conferences we had, we were unable to get those rules changed so that it was possible to live up to them; and every application that we signed we agreed that if we violated any of those rules that our permit was revokable at any time.

Mr. KNAEBEL: I move to strike out the answer, and I object once more to any further pursuit of this line of inquiry as immaterial, as raising questions of policy of an administrative character which have no place in a judicial proceeding; and, as a further ground of striking out the answer I base the objection upon the proposition that it is too vague and indefinite; it amounts to a general condemnation of the entire body of the rules and regulations, without any specifications, and without stating any reason for the conclusions derived.

Q. Senator Ammons, I hand you Defendant's Exhibit H.

499 (Witness examines Exhibit H.)

Q. I read you from Defendant's Exhibit H, in blank introduced into evidence, and ask you to specify what portions are objectionable, and, in your opinion detrimental to the cattle business in Colorado in the vicinity of the forest reserve?

Mr. KNAEBEL: Objected to as incompetent.

Counsel for defendant reads Exhibit H. as follows:

I also hereby bind myself and my employees engaged in caring for the animals while on the forest to extinguish all camp fires started by myself or any of my employees before leaving the vicinity thereof, and to render all reasonable aid in extinguishing forest fires within the district in which the stock is grazed.

I also hereby agree that I will allow my stock to graze only upon the areas specified in the permit, and that I will obey and support all the laws and regulations governing National Forests.

I also agree to forfeit the permit whenever the National Forest for any reason ceases to exist, or for a violation of the National Forest regulations now or hereafter adopted or of any of the terms hereof, or whenever an injury is being done to the Forest by reason of the presence of the animals therein.

A. The last reason there is good; the balance of that exhibit, I think that every man—I think there never has been an objection to assisting in putting out fires. From a practical standpoint I think it would be very detrimental to attempt to enforce that about specifying certain locations; for instance, if I am given a certain location now in the reservation I might be able to take in the yearlings that had not run in that neighborhood before and get them located in that place this year; if next year I should be ordered to move these across the hill, or over on the next creek, it
500 would be impossible for me to hold them there unless I kept them constantly herded, they would tramp back and forth and they would be dying off and become sore-footed and would not thrive. Cattle will go back to their old range if they can get there; I have had cattle go over a hundred miles.

Q. Now, Senator Ammons, I read you from Defendant's Exhibit G., the same being a blank form of the grazing permit issued by the Department.

A. Another thing I wanted to speak of, this question of agreeing to rules hereafter made. I don't think that is reasonable at all; I don't think any business man will agree that there is any reason whatever in that rule,—agree to something that may be a rule that may be made tomorrow. These rules are changeable; they are not like a law passed by congress and legislature; a forester can change those rules any time he likes, through the Secretary of Agriculture,—I suppose I should use that term. If I agree to keep some rule that I don't know what it is, I don't think that is reasonable at all, and everybody objects to that rule in there that I ever talked to.

Mr. KNAEBEL: Counsel for complainant moves that the answer

be stricken, as incompetent evidence in this case, and as attempting to speak for the whole community, and an individual opinion of the witness.

WITNESS: No, I don't. If my language leads to that I will change it; I am speaking for myself in that.

501 Q. Senator Ammons, I read you from Defendant's Exhibit G., the same being a blank form of a grazing permit, and request you to listen, and call attention to what you say are the objectionable parts thereto:

Mr. —— —— of —— * * * is hereby authorized to pasture the following number and class of live stock * * * upon public lands within the —— National Forest * * * Provided, That the animals shall not intrude upon any area upon which grazing is prohibited, or upon any portion of the National Forest except the following described area: * * *

This permit is issued on the condition that said —— has * * * agreed to comply fully with all National Forest rules and regulations now or hereafter adopted.

This permit is issued with no obligation or agreement on the part of the Government to maintain an exclusive possession upon any part of said forest to any one person or firm, nor as to adjustment of any conflict as to possession.

For violation of any of the terms of the application on which it is based, or whenever any injury is being done the forest by reason of the presence of the animals therein, this permit will be cancelled and the animals will be removed from the Forest.

Mr. KNAEBEL: I want to make the same objection that I made before to the question propounded, upon the ground that it is incompetent to ask the opinion of this witness as to reasonability or otherwise of this rule, and that such testimony has no tendency whatever to support or overthrow any contention legitimately embraced within this inquiry.

A. The same objection as there was in the other. The additional one I want to mention is that the permittee, as he is called by the Service, has no right that he can enforce anywhere.

502 Q. You spoke a minute ago of the financial difficulties connected with raising cattle. Please explain more fully.

Mr. KNAEBEL: That is objected to as incompetent.

A. As I have explained, a large amount of the operations in Colorado are on borrowed capital, and people experience a great deal of difficulty in securing money for the purpose when they can not assure the lender that he will be protected in grazing their cattle during the period for which the loan is made.

Q. I read Regulation 47, set out in the bill of complaint, being in the use book of 1907, as follows:

Persons owning cattle and horses which regularly graze on ranges located along the boundary line and only partially included within a National Forest may be granted permits for such portion of their stock as the circumstances appear to justify, but may be required to

herd or so handle their stock as to prevent trespassing by that portion for which a permit is not granted, and to sign a supplemental agreement to that effect.

Q. What, in your opinion, is unreasonable in such regulation, or does not tend to the protection of the forest?

Mr. KNAEBEL: Objected to for the reasons last assigned.

A. The first part of that I have seen no objection to, that there may be an arrangement made for the payment of part of them; but I object to the part that would require a man to herd his cattle off the reservation. I think they ought to fence it if they want to keep them off.

503 Q. As a practical cattle man, would a herd that has been raised in a certain locality—if a permit is granted for half of them what will become of the other half?

A. The other half will drift back where they have always run unless somebody herds them off, probably, unless it might be a few strays.

Q. Have a herd of cattle any tendency to stay together?

A. No, sir, not very much, where they are kept together they will, but they will keep breaking up when they come in contact with other cattle, especially the younger ones will follow off where the other cattle are; they seem to have their cronies like people; there is no accounting for them.

Cross-examination.

By Mr. KNAEBEL:

Q. Have you made any special study, Senator, of the subject of reforestration?

A. Not a great deal, no, sir; only from what little I have been able to see; I have not learned how to reforest anything in this country yet, except to let it grow itself.

Q. You would not testify, or would not express an opinion, would you, that excessive grazing could not, under any circumstances, retard or prevent reforestration that might otherwise occur?

A. No, I would not say that, but I don't know but it might be advantageous especially in such instances as I have already related, you might get more reforestration than by having the surface of the ground covered by grass or other growth.

504 Q. Don't you think in a given area so many cattle were introduced that they ate off everything short and kept tramping down the surface for an indefinite time so that the efforts of young seedling trees to maintain themselves might be overcome?

A. I don't believe you could keep cattle on that long, unless you fenced them, to do that much harm.

Q. But suppose they did. Take the hypothetical case.

A. If you put them in like a corral of course you would tramp everything up that would attempt to grow at all,—if you eat all the grass off you will have some other growth come there, it might

be trees, it might be weeds, it might be the best way to seed it if you put the cattle on there to tramp in.

Q. Have you ever observed the effects of excessive overgrazing by animals upon the manner in which surface water run away and cut up the soil?

A. I have never seen anything of that kind; I have seen a great deal of damage done by roadways and trails, especially roads built up and down the streams, where in taking off timber it formed a drain-way from the main streams to the side streams, and from those to the draws, hollows, and to the tops of the hills.

Q. Don't you know it is a fact that where you have a steep slope that is well grown with a thick growth of grass, a sudden downpour of rain does not run away down that slope as rapidly as it would if it were a bare slope without any grass stems to retard the water, nor any grass stems to aid the water in sinking into the
505 soil; have you considered that?

A. Yes, sir, I think you are right about that.

Q. Think I am correct on it?

A. Yes, sir.

Q. You feel pretty strongly on this question of grazing, don't you, Senator?

A. Yes, sir, I do,—been studying it pretty closely.

Q. Don't you feel that you are so interested and have expressed yourself so often that you can hardly be an impartial witness on this subject?

A. I don't know; I presume I am subject to all the bias of other human beings.

Q. Well, your feelings on it amount to a conviction, don't they?

A. Not altogether, no, sir. There is so much about this that I don't know, and I feel myself that I don't know, and I am becoming pretty well convinced that a great many other people don't know; one of those things is about planting trees.

Q. Then would you think it is better to settle those questions in a court, or to have them settled by those who have a special training and employment for the purpose of making a study of it?

A. I think that it would be a very wise thing if they would start out and study this question and learn how, before they try to practice it.

Mr. WARD: I wish to offer Exhibit K.

It is hereby stipulated by the parties to this cause through their respective counsel that the testimony of the witnesses William W. Williams, Marcus Lafayette Shippie, William P. Finley, Harry M. Shuttleworth, U. M. Trout, W. L. Girdner, J. W. Zimmer-
506 man, Frederick Light and E. M. Ammons, taken before Clifford G. Rowe, Esq., upon the 8th day of October, 1908, and reduced to stenographic minutes by Miss Nellie Preston, Stenographer, pursuant to the consent of the said counsel, may be by the said stenographer transcribed into typewriting, and as so transcribed may be certified by the Examiner to the Court as testimony duly and properly taken in the cause, and that the signatures of the several witnesses to their respective testimony *is* hereby waived.

It is further stipulated by and between the respective parties hereto that the witness Harry H. French, who has heretofore testified on behalf of the complainant before Examiner Sanford C. Hinsdale, at Denver, may be now recalled for further testimony, and that his testimony to be given may be taken by the same stenographer here present, in stenographic minutes and subsequently transcribed into typewriting; that the signature thereto by the witness shall be, and the same is hereby waived, and that his testimony may be returned as the testimony for the complainant by and under the certificate of the said Clifford G. Rowe, Special Examiner, as evidence in the cause, subject to objections.

HARRY H. FRENCH, a witness produced on behalf of the complainant, being duly sworn testified as follows:

Direct examination.

By Mr. KNAEBEL:

Q. You are the same Harry H. French who testified heretofore in Denver?

507 A. Yes, sir.

Q. Supervisor of the Holy Cross Forest?

A. Yes, sir.

Q. Did you ever say to the defendant Light at any time last year that he might leave his cattle upon the reservation?

A. No, sir.

Q. Or any of them?

A. No, sir.

Q. Have you made a visit recently to the Light ranch and vicinity?

A. Yes, sir.

Q. For what purpose?

A. For examining the range and looking in particular, paying particular attention to the trails in that vicinity.

Q. Did you take any photographs of the trails?

A. Yes, sir.

(Witness produces photographs which are marked plaintiff's Exhibits R 1 to 6 inclusive.)

Q. Mr. French, I show you a photographic print marked "Plaintiff's R. 1, C. G. Rowe", another marked "Plaintiff's R. 2, C. G. Rowe, and four more marked "Plaintiff's R. 3, C. G. Rowe," "R. 4, C. G. Rowe," "R. 5, C. G. Rose," and "R. 6, C. G. Rowe," respectively, and will ask you to take these in their order and state who took them, and where they were taken, and what each one represents designating in your answer each particular photograph by the numerical number written on the back.

A. Exhibit R. No. 1. This photograph was taken by me.

Q. When?

A. On September 29, 1908, and shows a trail about thirty rods from the northwest corner of section 1, township 9 south,

508 Range 87 west.

Q. Where is it with reference to Mr. Light's ranch?

A. It is west of Mr. Light's ranch; it is about two miles, or two miles and a quarter.

Q. Did you say it was east or west of the Forest boundary line?

A. East, I said, about thirty rods.

Q. You said west, I think.

A. I meant east; if I said west I was mistaken.

Q. Has that any reference to either one of the trails that were marked upon the map, plaintiff's Exhibit 1, that was used in Denver?

A. Yes, sir.

Q. What?

A. With reference to the northern trail.

Q. Is it a portion of the northern trail?

A. Yes, sir.

Q. And what do you say as to whether or not that trail leads into the Reservation?

A. I say that it does; about thirty rods from where this picture was taken is where the trail enters the forest.

Q. And where does it lead in the other direction?

A. It leads to the northeast,—in a northeasterly direction.

Q. In what place with reference to the Light ranch?

A. About one-fourth of a mile below Mr. Light's north fence.

Q. At the watering place there?

A. Yes, sir, Sopris Creek—East Sopris Creek.

Mr. KNAEBEL: That is offered in evidence,—Exhibit R. 1.

(Witness continuing:) Photograph R. 2 was taken by me
509 on September 30th, 1908.

Q. State what that is.

A. This is a trail about three quarters of a mile to the south and west of Mr. Light's ranch.

Q. How far from the Reservation?

A. Something over a mile; I could not state the exact distance.

Q. Now do you know where that trail leads from, and where it goes to, with reference to the Light ranch on the one side or the reservation on the other?

A. This is a trail that leads from the opening in the southwest corner of Mr. Light's ranch where the bars are shown; it is in one of the other exhibits, I don't remember the number.

Q. How far does it extend southwesterly with reference to the Reservation?

A. It extends—the trail can be followed the entire distance to the Forest line.

Q. Now look at R. 4 and state what that is?

A. That is a trail leading west from East Sopris a short distance below Mr. Light's north fence.

Q. Is that a portion of the trail that you have previously testified leads into the Forest reserve?

A. No, the trail that leads into the Forest Reserve starts a little farther down Sopris Creek.

Q. What is this trail if you know?

A. This leads around Mr. Light's west fence.

Q. Around the northwest corner?

510 A. Around the northwest corner of Mr. Light's fence, and south.

Q. Do you know whether it leads to the trail from his southwest opening?

A. Yes, sir, it does.

Q. Now take R. 6 if you will; state what that is.

A. R. 6 is a photograph taken by me on September 29th.

Q. What does it represent?

A. It represents a trail just east of the Forest line; this is about thirty rods west from where the first photograph was taken which was exhibited. This is very nearly the boundary line.

Q. Thirty rods west from R. 1?

A. Yes, sir.

Q. Now please look at R. 3 and state what that is?

A. R. 3 is a photograph taken by me on September 30th. It shows a wood road on the east side of East Sopris Creek about, I should judge, a quarter of a mile below Mr. Light's north fence.

Q. Leading whither?

A. Leading down into the main Emma road.

Q. Now, then, take R. 5 and state what that is.

A. R. 5 is a photograph taken by me on September 30th, and was taken about twenty rods east of Exhibit R. 2.

Q. On the same trail?

A. On the same trail.

Mr. KNAEBEL: These are all offered in evidence.

Said exhibits were received without objection.

Cross-examination.

By Mr. WARD:

Q. Mr. French, I show you Exhibit R. 1. Please tell me again just where that location is, and the man on the horse.

511 A. About thirty rods east of the Forest line.

Q. In what section and township?

A. Section 1, township 9, south range 87.

Q. How far from the north line of section 1?

A. About thirty rods, or such a distance; I didn't measure the distance approximately.

Q. But is was south of Section 1,—inside of Section 1?

A. Yes sir.

Q. Somewhere in the northwest quarter of Section 1, Township 9 south range 87 west?

A. Yes.

Q. And you identify that as a part of the trail marked on Exhibit 1 before Commissioner Hinsdale as the most northerly trail?

A. Yes, sir.

Q. So you feel positive about that?

A. Yes, sir.

Q. I hand you here a plat made by myself, upon which is marked in dot-ed lines in my handwriting what purports to be a trail as

marked by McLaren. Do you remember anything about the location of that trail now since I have shown you this copy?

A. Yes, sir.

Q. From your present remembrance as refreshed by this copy, does the original exhibit with Commissioner Hinsdale show that the northerly trail enters the Forest Reserve from the north, from Section 35, or do you remember, township 8 south, range 87 west?

A. As I remember this it was stated that this was an approximate location of the trail.

512 Q. Yes, approximate. Do you consider the difference of half a mile or a mile much consequence?

A. It would not be that difference.

Q. But is it your recollection now, Mr. French, that the plat as marked shows the trail coming out to the north side of the Forest Reserve in Section 35, or do you remember?

A. I wouldn't say for sure.

Q. And if the trail is marked upon Exhibit 1 with Commissioner Hinsdale, as coming out of the southeast quarter of Section 35, township 8, south range 87 west, then the trail would be improperly marked upon the plat?

A. Yes, it was just approximated; it was so stated.

Q. It, as a matter of actual fact, comes out of another section of land, through another section, through Section 1?

A. The trail I have referred to?

Q. Yes.

A. Yes, it does.

Q. Instead of coming out in Section 35 it comes out in Section 1 of Township 9?

A. The one I have just referred to?

Q. The one you have identified as a northerly trail on the plat?

A. Yes, sir.

Q. Now how much of the trail there does the photograph show clearly in this R. 1?

A. R. 1?

Q. Yes.

A. Oh, possibly thirty or forty yards.

Q. And how far is it from that section, from the boundary of the Forest Reserve, to the north line of Mr. Light's fence where it leaves Sopris Creek, approximately?

513 A. From that trail to the north line?

Q. To the north corner of Mr. Light's fence?

A. Oh, it is considerably over two miles.

Q. So the photograph gives a very small portion of the entire trail?

A. Oh no, it would be impossible to take a picture that would give a photograph of the entire trail, because that is a rough country—broken.

Q. Did you follow that trail down from that point to the corner of Mr. Light's fence?

A. Very nearly all the way.

Q. Isn't it also a fact, Mr. French, that there are a large number of trails that branch off in all directions through that country?

A. Oh, I don't say that that is the only trail in that country.

Redirect examination.

By Mr. KNAEBEL:

Q. Exhibit R. 1 you say was taken on the trail in Section 1, of township 9 south, range 87; is that correct?

A. Yes, sir.

Q. Were you able to identify the spot where the photograph was taken, when you took it, as being within that section?

A. Yes, sir.

Q. And with reference to the northwesterly corner of that section, where was the photograph taken?

A. It was taken south and east from the northwest corner.

Q. Was it near to the northwesterly corner?

A. Yes, probably thirty rods, something like that; I didn't measure the distance.

Q. Now those trails that were laid down on the map Ex-
514 hibit 1 used in Denver, were put on there after you and McLaren got to Denver, by approximation, weren't they?

A. Yes, sir.

Q. And you so testified?

A. And so testified.

Q. What do you now find as to whether the northerly trail should have been shown as entering the Reservation through the northwest corner of Section 1, I have referred to, or in the approximate southeast corner of Section 35 of the next township on the north?

A. It should be shown as entering in Section 1, in the northwest of Section 1.

Q. Very little difference, is there not?

A. Very little, yes, sir.

Recross-examination.

By Mr. WARD:

Q. You will remember the testimony before Commissioner Hinsdale that the platting of the trail from memory placed the trail where it left Sopris Creek at about quarter of a mile away from the correct place. Do you remember that testimony?

A. I don't quite understand.

Q. Is it your recollection that the trail was accurately platted as to where it left Sopris Creek upon that plat?

A. Accurately platted?

Q. Yes.

A. Oh, the trail as shown on that map was platted from memory, and stated as being approximately correct.

Q. And you don't remember how far off it was estimated to be?

A. Not to exceed a quarter of a mile.

515 Q. That is where it began?

A. Yes, sir.

Q. Now if it is true that the plat shows a trail as ending in a different section and township, that would also indicate that it was wrong both at the beginning and at the end, wouldn't it?

A. Not necessarily so.

Q. Well, if the plat shows the trail as coming out of the Forest Reserve into Section 35 and township 8, whereas it came out of the Forest Reserve in Section 1, township 9, would the plat be right?

A. No.

Q. Did you follow that trail throughout its length down to where it leaves Sopris Creek?

A. Not the entire distance. I answered that question a while ago.

Q. Do you find the trails more strongly marked near water in that country up there?

A. Yes, I think they are.

Redirect examination.

By Mr. KNAEBEL:

Q. You have followed this trail, have you, on previous occasions?

A. Which trail do you have reference to there?

Q. The trail leading from the north of Mr. Light's to the Forest?

A. Yes, sir.

Q. And can you now state whether or not the trail which you have referred to in connection with these photographs is the same trail which you previously followed from near Mr. Light's place to the Reservation?

A. It is.

516 Recross-examination.

By Mr. WARD:

Q. Mr. French, have you at any time ever followed the trail shown in exhibit R 1 from where the photograph is taken, down to where it leaves Sopris Creek.

A. Yes, sir.

Q. When?

A. I couldn't state the exact date. I have ridden around over that trail.

UNITED STATES OF AMERICA,
District of Colorado, ss:

I, Clifford G. Rowe, duly appointed Special Examiner in Chancery by the Circuit Court of the United States for the District of Colorado, do hereby certify that on the day mentioned in the proceedings and depositions in this cause I was attended by the counsel and witnesses aforesaid at my office in Glenwood Springs, Colorado; that said witnesses, to-wit, William W. Williams, Marcus Lafayette Shippie, William P. Finley, Harry M. Shuttleworth, U. M. Trout, W. L. Girdner, J. W. Zimmerman, Frederick Light and E. M. Ammons, each were first duly sworn according to law, as witnesses in the suit or cause in the caption hereto mentioned, and there examined before me orally by counsel; and by the consent of the parties by their several said solicitors the examinations and depositions of said wit-

nesses were severally stenographically written down and afterwards typewritten; that such examinations were had in the presence of the solicitors of the several parties hereto, and that said depositions, after being completed and typewritten, were duly sworn
517–524 to by the said witnesses, whose signatures thereto were waived by stipulation of counsel.

I further certify that the foregoing is a true statement of all the proceedings had before me on the day mentioned, in the matter of taking testimony herein, and that complainant's exhibits marked R 1 to R 6 inclusive, and defendant's exhibits marked A to K inclusive, were duly introduced in evidence, and are herewith returned into court.

CLIFFORD G. ROWE,
Special Examiner in Chancery.

Dated at Glenwood Springs, Colo., this 30th day of November, A. D. 1908.

* * * * * * *

525 ROWE'S EX. K, DEF'T.

Holy Cross Forest Reserve.

Colorado.

(Second Proclamation.)

By the President of the United States of America.

A Proclamation.

Whereas, the Holy Cross Forest Reserve, in the State of Colorado, was established by proclamation dated August twenty-fifth, nineteen hundred and five;

And whereas, it appears that the public good would be promoted by adding to the said forest reserve certain lands, within the State of Colorado, which are in part covered with timber;

And whereas, it is provided by the Act of Congress, approved June fourth, eighteen hundred and ninety-seven, entitled, "An Act Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes", that "The President is hereby authorized at any time to modify any Executive order that has been or may hereafter be made establishing any forest reserve, and by such modification may reduce the area or change the boundary lines of such reserve, or may vacate altogether any order creating such reserve";

Now, therefore, I, Theodore Roosevelt, President of the United States of America, by virtue of the power in me vested by the said act of Congress, do proclaim that the aforesaid Holy Cross Forest Reserve is hereby enlarged to include the said additional lands, and

that the boundaries of the reserve are now as shown on the diagram forming a part thereof;

Excepting from the force and effect of this proclamation all lands which are at this date embraced in any legal entry or covered by any lawful filing or selection duly of record in the proper United States Land Office, or upon which any valid settlement has been made pursuant to law, and the statutory period within which to make entry or filing of record has not expired; and also excepting all lands which at this date are embraced within any withdrawal or reservation for any use or purpose to which this reservation for forest uses is inconsistent: Provided, that these exceptions shall not continue to apply to any particular tract of land unless the entryman, settler, or claimant continues to comply with the law under which the entry, filing, or settlement was made, or unless the reservation or withdrawal to which this reservation is inconsistent continues in force; not excepting from the force and effect
525*a*–529 of this proclamation, however, any land within the boundary herein described, which has been withdrawn to protect the coal therein but this proclamation does not vacate any such coal land withdrawal; and provided that these exceptions shall not apply to any land embraced in any selection, entry or filing, which has been allowed or permitted to remain of record subject to the creation of a permanent reservation.

Warning is hereby given to all persons not to make settlement upon the lands reserved by this proclamation.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 1st day of March, in the year of our Lord one thousand nine hundred and seven, and of the Independence of the United States the one hundred and thirty-first.

[SEAL.] THEODORE ROOSEVELT.

By the President:
ELIHU ROOT,
Secretary of State.

* * * * * * *

(Here follows diagram marked p. 525*b*.)

530 (Endorsed:) 5153. U. S. Circuit Court, District of Colorado. The United States vs. Fred Light. Report of testimony before Clifford G. Rowe, special examiner, behalf respondents. Opened, published and filed Dec. 29, 1908. Charles W. Bishop, clerk.

Forty-first Day, November Term, Tuesday, December 29th, A. D. 1908.

Present: The Honorable Robert E. Lewis, District Judge, and other officers as noted on the third day of November, A. D. 1908.

In Chancery. 5153.

THE UNITED STATES OF AMERICA
vs.
FRED LIGHT.

Bill for an Injunction and for Other Relief.

This cause coming on now to be heard on final hearing on *on* the bill of complaint, amendment to bill of complaint, demurrer, answer, supplemental answer, testimony and exhibits taken and filed herein, Ernest Knaebel, Esquire, appearing as solicitor for the complainant, and Ethelbert Ward, Esquire, and Ralph W. Mc-
531 Crillis, Esquire appearing as solicitors for the respondent, is argued by counsel to the hour of adjournment.

And thereupon, it is ordered by the court that further hearing herein be, and the same is hereby, continued until the incoming of the court on the thirty-first instant.

Forty-third Day, November Term, Thursday, December 31st, A. D. 1908.

Present: The Honorable Robert E. Lewis, District Judge, and other officers as noted on the third day of November, A. D. 1908.

In Chancery. 5153.

THE UNITED STATES OF AMERICA
vs.
FRED LIGHT.

Bill for an Injunction and for Other Relief.

This cause coming on to be further heard on final hearing on the bill of complaint, amendment to bill of complaint, demurrer, answer, suplemental answer, testimony and exhibits taken and filed herein, Ernest Knaebel, Esquire, appearing as solicitor for the complainant, and Etherbert Ward, Esquire, and Ralph W. McCrillis, Esquire, appearing as solicitors for the respondent, is argued by counsel, and by the court taken under advisement.

Saturday, January 2nd, A. D. 1909.

Before the Clerk:

In Chancery. 5153.

THE UNITED STATES OF AMERICA
vs.
FRED LIGHT.

Bill for an Injunction and for Other Relief.

At this day comes Ethelbert Ward, Esquire, a solicitor of this court and withdraws the appearance heretofore entered by
532 him herein as solicitor for an- on behalf of the respondent.

Forty-fifth Day, November Term, Tuesday, January 5th, A. D. 1909.

Present: The Honorable Robert E. Lewis, District Judge, and other officers as noted on the third day of November, A. D. 1908.

In Chancery. 5153.

THE UNITED STATES OF AMERICA
vs.
FRED LIGHT.

Bill for an Injunction and for Other Relief.

This cause came on to be further heard at this term upon the bill and answer last amended, the replication and the proofs, and was argued by counsel, and thereupon, upon consideration thereof, the court being now fully advised in the premises;

Doth order, adjudge, and decree that the defendant, Fred Light, and all and singular his attorneys, agents, servants, and employés, and all persons whomsoever, acting by, through, or under him, be, and they hereby are, forever and perpetually enjoined from driving or conducting or causing or permitting to be driven or conducted, any cattle, horses, or other live stock now or hereafter belonging to said defendant or subject to his control, into or upon the Holy Cross Forest, or any portion thereof, and from in any manner causing, suffering, permitting or allowing any such live stock cattle, or horses to go, stray, or remain upon or within the said forest or any portion thereof.

And it is further ordered, adjudged, and decreed that the plaintiff have and recover of and from the defendant its costs herein, including the reasonable expense of the taking down by
533 stenographer and typewriting of the testimony taken in behalf of the plaintiff in this cause, to be ascertained and taxed; and that the plaintiff have execution therefor.

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the Circuit Court of the United States within and for the District of Colorado.

In Equity. No. 5153.

UNITED STATES OF AMERICA, Complainant,
vs.
FRED LIGHT, Defendant.

Petition on Appeal.

To the Honorable Robert E. Lewis, District Judge:

The above named defendant in the above entitled cause, conceiving himself aggrieved by the order and decree made and entered by the above named court in the above entitled cause, under date of January 5th, 1909, wherein and whereby among other things it was and is ordered, adjudged, and decreed that the defendant Fred Light and all and singular his attorneys, agents, servants, and employés, and all persons whomsoever acting by, through or under him, be, and they hereby are, forever and perpetually enjoined from driving, or conducting, or causing or permitting to be driven or conducted, any cattle, horses, or other live stock, now or hereafter belonging to said defendant or subject to his control, into or upon the Holy Cross Forest Reserve, or any portion thereof, and from in any manner causing, suffering, permitting or allowing
534 any such live stock, cattle, or horses to go, stray or remain upon or within the said Forest, or any portion thereof, and that the plaintiff have and recover from the defendant its costs in said cause, including the reasonable expense of a stenographer in taking down and typewriting the testimony of the plaintiff herein, and that plaintiff have execution therefor, does hereby appeal to the United States Supreme Court from said order and decree, and particularly from that part thereof which perpetually enjoins the defendant from causing or permitting his live stock to go or remain upon the Holy Cross Forest —, for the reasons set forth in the assignment of errors, which is filed herewith; and he prays that this, his petition for his said appeal, may be allowed, and that a transcript of the record, proceedings, and papers upon which said order and decree was made, duly authenticated, may be sent to the United States supreme court.

Dated August 30, 1909.

R. W. McCRILLIS,
JOHN T. BARNETT,
JAMES H. TELLER,
Attorneys for Defendant.

(Endorsed:) No. 5153. In Equity. In the Circuit Court of the United States, district of Colorado. United States of America, Com-

plainant, versus Fred Light, Defendant. Petition on Appeal. Filed Aug. 31, 1909, Charles W. Bishop, Clerk. Thomas, Bryant & Malburn et al., Attorneys for defendant, 621-627 Ernest and Crammer Bldg., Denver, Colo.

535 Forty-eighth Day, May Term, Tuesday, August 31st, A. D. 1909.

Present: The Honorable Robert E. Lewis, District Judge, and other officers as noted on the fourth day of May, A. D. 1909.

In Chancery. 5153.

THE UNITED STATES OF AMERICA
vs.
FRED LIGHT.

Bill for an Injunction and for Other Relief.

This cause comes on now to be heard, Ralph W. McCrillis, Esquire, appearing as solicitor for the respondent. And thereupon, the respondent prays an appeal to the supreme court of the United States which is hereby allowed to it, but upon the condition, nevertheless, that the respondent give bond on such appeal in the sum of five hundred dollars ($500).

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the Circuit Court in and for Said District.

No. 5153. In Equity.

UNITED STATES OF AMERICA, Complainant,
vs.
FRED LIGHT, Defendant.

Assignment of Errors.

Comes now the defendant and files the following assignment of errors and having prayed an appeal in the above entitled cause, says that there is manifest error in the record and proceedings herein, and that the circuit court erred in this:

1st. In overruling the demurrer interposed by the defend-
536 ant to the bill of complaint in said cause, and requiring the defendant to make answer thereunto.

2nd. In entering a final decree therein in favor of the complainant and against the defendant in accordance with the prayer of the complaint.

3rd. That the court erred in rendering said decree, because the defendant was thereby perpetually enjoined from causing, suffer-

ing, permitting or allowing his cattle, horses and livestock from going within or remaining upon the Holy Cross Forest Reserve, described in said complaint, in contravention of the regulations of the Department of Agriculture in said complaint recited, and relating thereto.

4th. Because the statute authorizing or purporting to authorize, said regulations, is in contravention of the Constitution of the United States.

5th. Because the court in and by said decree determined the complainant to be exempt from the municipal laws of the state of Colorado concerning fences, and the maintenance thereof, being an act entitled "An Act concerning fences and repealing Chapter XXXIX of The General Statutes of the state of Colorado, entitled 'Fences,'" approved April 10th, 1885.

6th. Because the various acts of Congress and proclama-
537 tions of the President of the United States alleged and relied upon in the bill of complaint, whereby the said Holy Cross Forest Reserve was created, are unconstitutional exercises of power by the Congress and by the President of the United States acting thereunder, and being in excess of said powers are unconstitutional and void.

7th. Because said court by said decree recognized the validity of and enforced said rules and regulations of the Secretary of Agriture, recited in said complaint; that the exercise of said power by the Secretary of Agriculture consists of an unlawful and unconstitutional delegation of authority to him in consequence whereof said rules and regulations are void and of no effect.

8th. Because the said court in and by said decree determined and decided that the Congress and the President of the United States possessed constitutional power and right to organize the public domain within the state of Colorado into reservations and to operate the same and utilize the resources thereof as a source of profit to the United States.

9th. Because the said rules and regulations mentioned in said bill of complaint are unreasonable, do not insure or tend to insure the objects of forest reservation, and constitute an unconstitutional, unlawful and unwarranted interference by the Government of the United States with the fence and other statutes of the state of Colorado, enacted through the constitutional exercise of the
538 police power of said state, the contrary thereof being determined by said court in said decree.

10th. Because the consent of the state of Colorado to the establishment by Congress, or by the President of the United States, acting under its authority, of the said Holy Cross Forest Reserve, is constitutionally essential to the validity thereof; that without such consent the said reservation and the proclamation of the President creating the same is of no force or effect under the Constitution of the United States, but that the said decree determines the contrary.

11th. Because the rights asserted by the complainant in its bill of complaint are in violation of the terms of the act of Congress commonly called the "Enabling Act," whereby the state of Colorado

was permitted to adopt a constitution and be admitted into the Union upon an equality with the other states thereof, the contrary being determined by the said circuit court.

12th. Because the public lands of the United States are held in trust by the General Government for the people of the several states and the proclamation creating the said Holy Cross Forest Reserve without the consent of the people of Colorado thereto, duly expressed by an act of the General Assembly, is contrary to and in violation of the said trust and therefore of no effect.

13th. Because the said court was without jurisdiction to
539 hear and determine the said cause.

14th. The court further erred in not making, rendering, and entering a decree in favor of the defendant and against the complainant upon the record.

15th. And the court erred in other matters and things appearing upon the face of said record.

Wherefore, the said Fred Light, appellant, prays that the said decree in the circuit court of the United States, for the district of Colorado, in said cause, be wholly reversed and for naught held, and that the same be remanded with instructions to said circuit court to enter a decree therein for the defendant.

R. W. McCRILLIS,
JOHN T. BARNETT,
JAMES H. TELLER,
Attorneys for Defendant.

(Endorsed:) No. 5153. In Equity. In the circuit court of the United States, district of Colorado. United States of America, Complainant, versus Fred Light, Defendant. Assignment of Errors. Filed Aug. 31, 1909. Charles W. Bishop, clerk. Thomas Bryant & Malburn, et al., Attorneys for defendant, 621-627 Ernest and Cranmer Bldg., Denver, Colo.

540 American Bonding Company of Baltimore.

Home Office: Baltimore, Md.

Know all men by these presents, that we, Fred Light, as principal, and American Bonding Company of Baltimore, as surety are held and firmly bound unto United States of America, in the full and just sum of five hundred ($500.00) Dollars, to be paid to the said United States of America, its certain attorney, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 8th day of September, A. D. 1909.

Whereas, lately at a term of the circuit court of the United States for the district of Colorado, sitting in Denver, in a suit pending in said court betwen Fred Light, complainant, and The United States of America, respondent, a decree was rendered against the said Fred

Light, complainant, and the said Fred Light, complainant, having obtained an appeal and filed a copy thereof in the clerk's office of the supreme court of United States to reverse the judgment in the aforesaid suit; and a citation directed to the said United States of America, citing and admonishing it to be and appear at the Supreme Court of United States at Washington, D. C., within thirty days from and after the date of said citation.

541 Now, the condition of the above obligation is such, that if the said Fred Light shall prosecute said appeal to effect, and answer all damages and costs, if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

FRED LIGHT,
By R. W. McCRILLIS, *His Solicitor.*
AMERICAN BONDING COMPANY
OF BALTIMORE,
By FRANK ENGLAND, *Vice-President.*

[Seal American Bonding Company of Baltimore, Incorporated.]

Attest:

G. E. WROE, *Ass't Secretary.*
FRANK ENGLAND.

Approved:
ROBT. E. LEWIS,
District Judge.

(Endorsed:) No. 5153. In the U. S. Circuit Court. In Equity. U. S. of America vs. Fred Light. Bond on Appeal to U. S. Supreme Court. Filed Sep. 13, 1909. Charles W. Bishop, Clerk. Ralph W. McCrillis, 443 Equitable Building, Denver, Colorado.

Friday, October 1st, A. D. 1909.

At Chambers, before the Honorable Robert E. Lewis, District Judge, the following proceedings were had:

In Chancery. 5153.

THE UNITED STATES OF AMERICA
vs.
FRED LIGHT.

Bill for an Injunction and for Other Relief.

This cause coming on now to be heard, and it appearing that the transcript of the record on appeal to the Supreme Court of the United States can not be completed within the return day of the citation herein;

It is ordered that the return day of the citation on appeal to the Supreme Court of the United States be, and the same is
542 hereby enlarged and extended for thirty (30) days.

Sixty-third day, May term, Monday, October 25th, A. D. 1909.

Present: The Honorable Robert E. Lewis, District Judge, and other officers as noted on the fourth day of May, A. D. 1909.

In Chancery. 5153.

THE UNITED STATES OF AMERICA
vs.
FRED LIGHT.

Bill for an Injunction and for Other Relief.

This cause coming on now to be heard, and it appearing that the transcript of the record on appeal to the Supreme Court of the United States can not be completed within the return day of the citation herein;

It is ordered that the return day of the citation on appeal to the Supreme Court of the United States be, and the same is hereby enlarged and extended for fifteen (15) days.

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the Circuit Court of the Eighth Judicial Circuit.

In Equity. No. 5153.

UNITED STATES OF AMERICA, Complainant,
543 vs.
FRED LIGHT, Defendant.

Præcipe for Transcript.

(Filed Sept. 21, 1909).

To the clerk of the above entitled court:

You will please prepare a transcript of the record in this case to be filed in the office of the Clerk of the United States supreme court under the appeal heretofore perfected to said court, and include in said transcript the following pleadings, proceedings and papers on file, to-wit: Bill of complaint, appearance of Ralph W. McCrillis and Ethelbert Ward for respondent, demurrer to the bill of complaint, notice of hearing, order overruling demurrer, answer, supplemental answer, replication, complainant's testimony, respondent's testimony, final decree, petition on appeal, assignment of errors, order allowing appeal by respondent, citation and bond on appeal, and all other orders, stipulations, depositions, and papers, constituting the entire record in the above court.

Said transcript to be prepared as required by law and the rules of this court and the rules of the Supreme Court of the United States and on file in the offices of the clerks of said courts before the — day of ——, 1909.

RALPH W. McCRILLIS,
JOHN T. BARNETT,
JAMES H. TELLER,
Solicitors for Appellant.

544 (Endorsed:) In Equity. No. 5153. United States Circuit Court, for the Eighth Judicial Circuit. United States of America, Complainant, vs. Fred Light, Defendant. Præcipe for Transcript of Record. Filed Sep. 21, 1909. Charles W. Bishop, Clerk.

545 UNITED STATES OF AMERICA, *ss:*

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty (30) days from the date hereof, pursuant to an appeal allowed by the Circuit Court of The United States for the district of Colorado, wherein Fred Light is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, The Honorable Robert E. Lewis, Judge of the District Court of the United States for the district of Colorado and ex officio Judge of the circuit court of the United States for the district of Colorado, at Denver, in said district, this thirteenth day of September, A. D. 1909.

ROBT. E. LEWIS, *Judge.*

Proof of Service.

THE UNITED STATES OF AMERICA,
District of Colorado, ss:

On this — day of ——, A. D. 1909, personally appeared —— —— before me, the subscriber, clerk of the circuit court of the United States, for the district of Colorado, and makes oath that he delivered a true copy of the within citation to —— ——.

—— ——.

Sworn to and subscribed the — day of ——, A. D. 1909.

—— ——.

Service of within citation accepted at Denver this 13th Sept., 1909.

THOMAS WARD, JR.,
U. S. Att'y.

[Endorsed:] No. 5153. The Supreme Court of the United States. Fred Light, Plaintiff in error, versus The United States of America, Defendant in error. Citation. Filed Sep. 13, 1909. Charles W. Bishop, Clerk.

546 UNITED STATES OF AMERICA,
District of Colorado, ss:

I, Charles W. Bishop, clerk of the circuit court of the United States for the district of Colorado, do hereby certify the above and foregoing pages, bound in two (2) volumes, and numbered from one (1) to three hundred twelve (312) and from three hundred fifteen (315) to five hundred forty four (544), all numbers inclusive, to be a true, perfect, and complete transcript and copy of the pleadings and other matters set forth in the præcipe filed herein, together with a true copy of such præcipe, heretofore filed or entered of record in said court and in a certain cause lately in said court pending wherein The United States of America was complainant and Fred Light was respondent, as fully and completely as the same still remain on file and of record in my office at Denver.

In testimony to the above, I do hereunto sign my name and affix the seal of said court, at the City and County of Denver, in said district, this twenty-seventh day of October, A. D. 1909.

[Seal United States Circuit Court, District of Colorado.]

CHARLES W. BISHOP, *Clerk.*

547 UNITED STATES OF AMERICA,
District of Colorado, ss:

In the Circuit Court of the United States for the District of Colorado, Sitting at Denver.

5153. In Chancery.

THE UNITED STATES OF AMERICA
vs.
FRED LIGHT.

Bill for an Injunction and for Other Relief.

This cause coming on now to be heard, and it appearing that the transcript of the record on appeal to the Supreme Court of the United States can not be completed within the return day of the citation herein;

It is ordered that the return day of the citation on appeal to the Supreme Court of the United States be, and the same is hereby, enlarged and extended for thirty (30) days.

ROBT. E. LEWIS, *Judge.*

October 1, 1909, Denver, Colorado.

548 [Endorsed:] No. 5153. United States Circuit Court, District of Colorado. United States of America vs. Fred Light. Order enlarging the return day of citation. Filed Oct. 1, 1909. Charles W. Bishop, Clerk. 30/377.

549 UNITED STATES OF AMERICA,
District of Colorado, ss:

In the Circuit Court of the United States for the District of Colorado, Sitting at Denver.

5153. In Chancery.

THE UNITED STATES OF AMERICA
vs.
FRED LIGHT.

Bill for an Injunction and for Other Relief.

This cause coming on now to be heard, and it appearing that the transcript of the record on appeal to the Supreme Court of the United States can not be completed within the return day of the citation herein;

It is ordered that the return day of the citation on appeal to the Supreme Court of the United States be, and the same is hereby, enlarged and extended for fifteen (15) days.

ROBT. E. LEWIS, *Judge.*

October 25th, 1909, Denver, Colorado.

550 [Endorsed:] No. 5153. U. S. Circuit Court, District of Colorado. The United States vs. Fred Light. Order enlarging return day of citation 15 days. Filed Oct. 25, 1909. Charles W. Bishop, Clerk. 30/435.

551 In the Supreme Court of the United States.

No. 667, October Term, 1909.

FRED LIGHT, Appellant,
vs.
THE UNITED STATES OF AMERICA, Appellee.

Appeal from the Circuit Court of the United States within and for the District of Colorado.

Statement of Errors.

To Honorable James H. McKenney, Clerk of the Supreme Court of the United States:

Fred Light, the appellant in the above entitled cause, in compliance with the ninth paragraph of the tenth rule of the Supreme Court, hereby states that in the prosecution of this appeal he intends to rely upon the following errors assigned on the record of said cause, to-wit:

That the Court erred,

1st. In overruling the demurrer interposed by the defendant to the bill of complaint in said cause, and requiring the defendant to make answer thereunto;

2nd. In entering a final decree therein in favor of the complainant and against the defendant in accordance with the prayer of the complaint;

3rd. In rendering said decree, because the defendant was thereby perpetually enjoined from causing, suffering, permitting or allowing his cattle, horses and live stock from going within or
552 remaining upon the Holy Cross Forest Reserve, described in said complaint, in contravention of the regulations of the Department of Agriculture in said complaint recited, and relating thereto;

4th. Because the statute authorizing, or purporting to authorize said regulations, is in contravention of the Constitution of the United States;

5th. Because the Court in and by said decree determined the complainant to be exempt from the municipal laws of the state of Colorado concerning fences, and the maintenance thereof, being an Act entitled "An Act concerning fences and repealing Chapter XXXIX of the General Statutes of the state of Colorado, entitled, 'Fences,'" approved April 10th, 1885.

6th. Because the various acts of Congress and proclamations of the President of the United States alleged and relied upon in the bill of complaint, whereby the said Holy Cross Forest Reserve was created, are unconstitutional exercises of power by the Congress and by the President of the United States acting thereunder, and being in excess of said powers, are unconstitutional and void.

7th. Because said Court by said decree recognized the validity of and enforced said rules and regulations of the Secretary of Agriculture, recited in said complaint; that the exercise of said power by the Secretary of Agriculture consists of an unlawful and unconstitutional delegation of authority to him, in consequence whereof said rules and regulations are void and of no effect;

8th. Because the said court in and by said decree determined and decided that the Congress and the President of the United States possessed constitutional power and right to organize the public domain within the state of Colorado into reservations and to operate the same and utilize the resources thereof as a source of profit to the United States;

553 9th. Because the said rules and regulations mentioned in said bill of complaint are unreasonable, do not insure or tend to insure the objects of forest reservation, and constitute an unconstitutional, unlawful and unwarranted interference by the Government of the United States with the fence and other statutes of the state of Colorado enacted through the constitutional exercise of the police power of said state, the contrary thereof being determined by said court in said decree;

10th. Because the consent of the state of Colorado to the establishment by Congress or by the President of the United States, acting under its authority, of the said Holy Cross Forest Reserve, is constitutionally essential to the validity thereof; that without such consent the said reservation and the proclamation of the President creating the same is of no force or effect under the Constitution of the United States, but that the said decree determines the contrary;

11th. Because the rights asserted by the complainant in its bill of complaint are in violations of the terms of the act of Congress commonly called the "Enabling Act" whereby the state of Colorado was permitted to adopt a constitution and be admitted into the Union upon an equality with the other states thereof, the contrary being determined by the said circuit court;

12th. Because the public lands of the United States are held in trust by the General Government for the people of the several states, and the proclamation creating the said Holy Cross Forest Reserve without the consent of the people of Colorado thereto, duly expressed by an act of the General Assembly, is contrary to and in violation of the said trust, and therefore of no effect;

13th. Because the said court was without jurisdiction to hear and determine the said cause;

554 14th. The court further erred in not making, rendering and entering a decree in favor of the defendant and against the complainant upon the record;

15th. And the court erred in other matters and things appearing upon the face of said record;

That he considers the following named parts of the record necessary to be considered in connection with said assigned errors, to-wit:

The pleadings and the decree; all the evidence, excluding, however, the exhibits, except only complainant's exhibit 1 (a map); complainant's exhibit 4 (proclamation and map); defendant's ex-

hibit K (proclamation and map), which three exhibits should b printed with the evidence.

JOHN T. BARNETT,
JAMES H. TELLER,
Attorneys for Appellant.

Received a copy of the above Statement this 2nd day of December A. D. 1909.

THOMAS WARD, JR.,
U. S. Att'y for Colorado,
Solicitors for Appellee.

555 [Endorsed:] 667, 21893. In the U. S. Supreme Court No. 667. October Term, 1909. Fred Light, Appellant, vs United States of America, Appellee. Statement of Errors

556 [Endorsed:] File No. 21893. Supreme Court U. S October Term, 1909. Term No. 667. Fred Light Appel lant, vs. The United States. Statement by counsel for appellant o errors intended to be relied upon and designation of parts of record to be printed and proof of service of same. Filed December 6, 1909

Endorsed on cover: File No. 21,893. Colorado C. C. U. S. Term No. 667. Fred Light, appellant, vs. The United States. Filed November 8th, 1909. File No. 21,893.

Nov. 2 1910. No. 860

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1910

FRED LIGHT, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, APPELLEE.

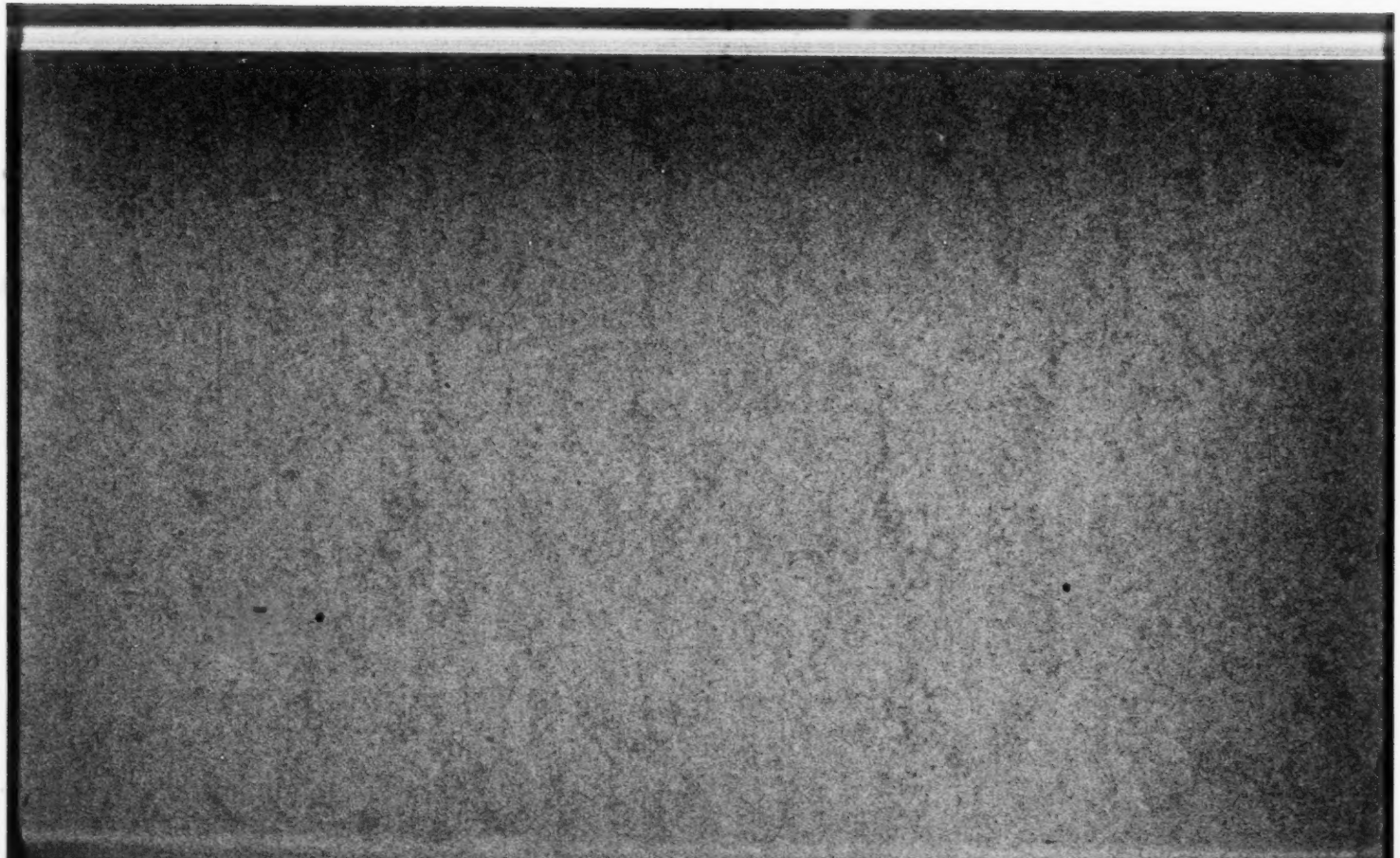
Appeal from the United States Circuit Court for the District of Colorado.

MOTION TO ADVANCE CAUSE

C. S. THOMAS,
E. C. STIMSON,
H. M. TELLER,
MILTON SMITH,
H. A. HICKS,
RALPH W. McCRILLIS,
Of Counsel.

JOHN T. BARNETT,
Attorney General of Colorado,
JAMES H. TELLER,
Attorneys for Appellant.

THE SMITH-BROOKS PRINTING COMPANY, DENVER, COLO.



SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM 1909.

No. 667

FRED LIGHT, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, APPELLEE.

Appeal from the United States Circuit Court for the District of Colorado.

MOTION TO ADVANCE CAUSE.

Comes now the appellant, by his counsel, and moves the court to advance said cause, and for grounds of said motion shows to the court that the appeal prosecuted herein seeks to reverse a judgment and decree of the United States Circuit Court for the District of Colorado, by which the appellant is perpetually enjoined from permitting his cattle or other live stock from going, staying or remaining upon the

Holy Cross Forest Reserve, which is a considerable tract of the public domain situated in the state of Colorado, and not protected by a fence on any of its boundaries.

The Supreme Court of Colorado has several times held that the common law rule as to fences is not in force in the state of Colorado; and a state statute permits the recovery of damages because of trespass by live stock only in case such trespass occurs on lands protected by a fence of prescribed material and construction.

The granting of said injunction is in effect a holding by the Circuit Court that the said rules and statute as to fences do not apply to, and are not in force on said forest reserve; which is to say that the forest reserves are not subject to the general police power of the state. It is an attempted resumption by the federal government of jurisdiction over a part of the state, without the consent of the state legislature thereto, as is required by the United States Constitution. Inasmuch as nearly one-fourth of Colorado is within forest reserves, the question thus presented becomes one of state-wide interest, and, since other states are affected by this ruling, the matter is one of general public concern.

Because of the importance of the subject involved in this litigation, the attorney general of Colorado has assumed the direction of this cause, in behalf of the appellant, under and in pursuance of an act of the last legislative assembly of Colorado making an appropriation to aid in the prosecution or defense of such suit or suits as might properly present the question for final determination, to the end that the respective rights and powers of the state and the fed-

eral government concerning public lands and waters within the state may be adjudicated by this court.

Because of these facts, it is submitted that the cause should be advanced, so that the conflict of jurisdiction over these important subjects may be speedily settled.

JOHN T. BARNETT,
Attorney General of Colorado,

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No. 360.

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In the Supreme Court of the United States.

~~October Term, 1910. No. 360.~~

FRED LIGHT, APPELLANT,

vs.

THE UNITED STATES, APPELLEE.

Appeal from the Circuit Court of the United States for the District of Colorado.

BRIEF OF APPELLANT.

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Attorney General of the State of Colorado

In the Supreme Court of the United States.

OCTOBER TERM, 1909. No. 667.

FRED LIGHT, APPELLANT.

vs.

THE UNITED STATES, APPELLEE.

Appeal from the Circuit Court of the United States for the District of Colorado.

BRIEF OF APPELLANT.

This is an appeal from a decree of the Circuit Court of the United States for the district of Colorado, perpetually enjoining the appellant from permitting his cattle to stray upon the Holy Cross Forest Reserve.

The bill of complaint alleges that the president of the United States by proclamation duly made reserved from entry and set apart as a public reservation, to be known as the Holy Cross Forest Reserve, a large body of public lands of complainant within the limits of the state of Colorado, and that the same constitutes "a public forest reservation, devoted to the ef-

fectuation of complainant's laws and policy touching the preservation and use of the national forests"; that the defendant is a breeder of cattle residing and carrying on his business near the said forest reserve; that the defendant had, subsequent to the establishment of said reserve, turned his cattle upon the unreserved public lands near his ranch, well knowing that they would trespass upon the said reserve by going thereon to graze; that his said cattle did so trespass upon said reserve and that the said defendant threatened and intended thus to allow his cattle to trespass, feed and graze upon said reserve, involving repeated, continued and persistent trespasses upon complainant's property.

The prayer of the bill was that defendant be perpetually enjoined from causing or permitting his cattle so to trespass upon said reserve.

To this bill a general demurrer was filed and overruled. Defendant then answered, admitting that he had thus turned his cattle upon the public lands near the reserve; alleged that said reserve was not fenced; that it was subject to the law of the state of Colorado concerning fences, and that the setting apart of said reserve without the consent of the state was in violation of the Constitution and without effect.

The case was heard upon the bill, answer and evidence, and a decree entered in accordance with the prayer of the bill. The evidence shows that the reserve was not fenced.

ASSIGNMENT OF ERRORS.

It is assigned as error that the demurrer to the bill was improperly overruled because stating no

cause of action against defendant, and that the decree should have been in favor of defendant and dismissing the bill.

BRIEF AND ARGUMENT.

The effect of the decree enjoining appellant from allowing or permitting his cattle to go upon an unfenced reserve, is to compel him either to secure a permit from the forestry service and rent pasturage from the government, or herd his cattle from the land.

The decree, therefore, denies in effect that the laws of Colorado concerning fences, by which a stock-owner is exempt from obligation to keep his cattle from unfenced land, is in force on lands set apart as a forest reserve.

The errors assigned present for determination two principal questions:

(1) The question, above suggested, of the operation on the forest reserves of laws of the state enacted in the exercise of its general police powers, assuming that the reservation has been lawfully established; and,

(2) Has the federal government the constitutional capacity permanently to devote large tracts of the public domain within the boundaries of a state to purposes other than governmental?

I.

Taking up these questions in their order, it is natural to inquire what is the origin of this supposed

exemption of forest reserves from the jurisdiction of the state in the matter of police regulations.

This court has, from the first, recognized and declared that the jurisdiction of a state extends over all the territory within its boundaries.

> "A state has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits as any foreign nation, where that jurisdiction is not surrendered nor restrained by the federal Constitution."
>
> City of New York vs. Miln, 11 Pet., 139.

To the same effect are:

> Pennoyer vs. Neff, 95 U. S., 714.
> Van Brocklin vs. Anderson, 117 U. S., 158.
> Kansas vs. Colorado, 206 U. S., 93.

It is, therefore, incumbent upon one who asserts the existence of such exemption to point out the act of cession, or the constitutional provision from which it arises.

It seems, however, that some who contend for this exemption find its basis in the fact that title to the reserves is in a sovereign government. But if that be its source, it must extend to all lands so held, and hence unreserved public lands are not subject to the state's jurisdiction. This, it is believed, no one will assert; for if it be true, states containing public lands are, and have for years been, exercising jurisdiction

in large districts over which they have not and never have had authority.

Under this doctrine it follows that innumerable occupants of government lands have been unlawfully taxed upon their personal property there situate, and others have been convicted of offenses without warrant of law.

It is settled by the rulings of this court, and of other courts of high standing, that the government holds title to public lands, not as a sovereign, but as a proprietor merely. This, of course, applies only to public lands properly so called, and not to lands used for governmental purposes.

The case of Pollard's Lessee vs. Hagan, 3 Howard, 212 (1845), was said by Justice Catron to be the most important case that had, up to that time, been before the court. It involved the question of title to the bed of navigable waters in the state of Alabama. It was insisted that the general government held title to such lands as a sovereign right. The court held that Alabama was admitted into the Union upon an equal footing with the other states, and that the federal government held the lands only as a proprietor, and said:

> "We think a proper examination of this subject will show that the United States never held any municipal sovereignty, jurisdiction or right of soil in and to the territory of which Alabama, or any of the new states were formed, except for temporary purposes and to execute the trusts created by the acts of Virginia and Georgia legislatures, and the deeds of cession executed by

them to the United States and the trust created by the treaty with the French Republic, of the 30th of April, 1803, ceding Louisiana.

* * * * * *

"When Alabama was admitted into the Union on an equal footing with the original states, she succeeded to all the rights of sovereignty, jurisdiction and eminent domain which Georgia possessed at the date of the cession, except so far as this right was diminished by the public lands remaining in the possession and under the control of the United States, for the temporary purposes provided for in the deed of cession, and the legislative acts connected with it. Nothing remained to the United States according to the terms in the agreement, but the public lands. And, if an express stipulation had been inserted in the agreement, granting the municipal right of sovereignty and eminent domain to the United States, such stipulation would have been void and inoperative; because the United States have no constitutional capacity to exercise municipal jurisdiction, sovereignty, or eminent domain, within the limits of a state or elsewhere, except in the cases in which it is expressly granted.

* * * * * *

"The right of Alabama and every other new state to exercise all the powers of government, which belong to and may be exercised by the original states of the Union,

must be admitted and remain unquestioned, except so far as they are temporarily deprived of control over the public lands.

* * * * * *

"We therefore think the United States hold the public lands within the new states by force of the deeds of cession and the statutes connected with them, and not by any municipal sovereignty which it may be supposed they possess, or have reserved by compact with the new states, for that particular purpose. The provision of the Constitution above referred to shows that no such power can be exercised by the United States within a state. Such a power is not only repugnant to the Constitution, but it is inconsistent with the spirit and intention of the deeds of cession.

* * * * * *

"Full power is given to Congress 'to make all needful rules and regulations respecting the territory or other property of the United States.' This authorized the passage of all laws necessary to secure the rights of the United States to the public lands, and to provide for their sale, and to protect them from taxation."

In *Woodruff vs. N. Bloomfield G. M. Co.*, 18 Fed., 772, Judge Sawyer said:

"Upon the admission of California into the Union upon an equal footing with the original states, the sovereignty for all inter-

> nal municipal purposes, and for all purposes, except such purposes and with such powers as are expressly conferred upon the national government by the Constitution of the United States, passed to the state of California. Thenceforth the only interest of the United States in the public lands was that of a proprietor, like that of any other proprietor, except that the state under the express terms upon which it was admitted could pass no law to interfere with their primary disposal, and they were not subject to taxation. In all other respects the United States stand upon the same footing as private owners of land."

In *People vs. Scherer,* 30 California, 658, the court say:

> "The relation of the United States to the public lands since the admission of California into the Union is simply proprietary, —that of an owner of lands like any citizen who owns lands, and not that of municipal sovereignty."

In *Camp vs. Smith,* 2 Minn., 131, the court held that the state could tax lands after entry at the land office, saying:

> "The United States has but a proprietary interest in the public lands within the several states. The sovereignty is in the states."

In *Hendricks vs. Johnson,* 6 Porter (Ala.), 472, the court said:

> "The United States have no other right within the several states than as a land holder, and when they grant a portion of their domain, only such rights as are incidental to the land pass to the purchaser."

In *United States vs. Bridge Co.,* 6 McLean, 517, the court affirmed the right of an Illinois corporation to build its road over government land not held for private entry and sale, but not reserved for a public purpose. Justice McLean said:

> "Within the limits of a state Congress can, in regard to the disposition of the public lands and their protection, make all needful rules and regulations. But beyond this it can exercise no other acts of sovereignty which it may not exercise in common over the lands of individuals. * * * The proprietorship of land in a state by the general government, cannot, it would seem, enlarge its sovereignty or restrict the sovereignty of the state. This sovereignty extends to the state limits over the territory of the state, subject only to the proprietary right to the lands owned by the federal government, and the right to dispose of such lands and protect them under such regulations as it may deem proper.
>
> "It is difficult to perceive upon what principle the mere ownership of land by the

> general government within a state should prohibit the exercise of the sovereign power of the state in so important a matter as the easements named. * * * The right claimed for the state has no reference to lands specially appropriated, but to those held as general proprietor by the government, whether reserved or not."

The case of *United States vs. Chicago,* 7 Howard, 185, involved the right of the city to open streets through the Fort Dearborn reservation. The right was denied because its exercise interfered with the public use for which the reservation had been made; but the court said:

> "It is not questioned that land within a state purchased by the United States as a mere proprietor and not reserved or appropriated to any special purpose, may be liable to condemnation for streets or highways, like the land of other proprietors, under the rights of eminent domain. * * *
>
> "It seems, too, that the land purchased within a state for ordinary purposes by the general government must yield to the local public demands, yet land when held like this, at first by an original cession to that government, and afterwards appropriated for a specific public object, can not easily be shown liable to be taken away for an ordinary local object, though public, and especially when under another government and by mere implication."

The text shows that the special purposes mentioned included purely governmental purposes, such as for forts, etc.

This seems to be the rule equally, whether the land belonged originally to the United States or had been purchased by it. Judge Story, in United States vs. Cornell, 2 Mason, 60, said:

> "But though the United States may well purchase and hold land for public purposes within the territorial limits of a state, this does not of itself oust the jurisdiction or sovereignty of such state over the land so purchased. It remains until the state has relinquished its authority over the land, either expressly or by necessary implication."

It should be observed here that it is a fundamental rule of law that sovereignty is not to be taken away by implication.

People vs. Godfrey, 17 Johns., 225.

That the states would have jurisdiction unless relinquished by formal act, is suggested by section 8 of article 1 of the Constitution, which gives the United States exclusive jurisdiction "over all places purchased by the consent of the Legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards and other needful buildings."

That these are to be purchased with the consent of the Legislature, is the material provision bearing upon the question now under consideration.

Story, in his Commentaries on the Constitution, says:

> "If there has been no cession of the place by the state, although it has been constantly occupied and used, under purchase or otherwise, by the United States, for a fort or arsenal or other constitutional purpose, the state jurisdiction still remains complete and perfect."
>
> Story on the Constitution, section 1227, 5th Ed.

The case of *Fort Leavenworth Ry. Co. vs. Lowe*, 114 U. S., 525, grew out of the following circumstances:

For many years prior to the admission of Kansas, the United States had used a considerable tract of land for a fort, known as Fort Leavenworth. In admitting Kansas into the Union, no reservation of jurisdiction over this tract was made. Afterwards Kansas ceded to the government exclusive jurisdiction over the tract, saving the right to serve process and to tax railroads and other corporations on said reservation. The appellant in the case paid a tax under protest and brought suit to recover it. This Court affirmed the decision of the Kansas Supreme Court, denying the right to recover. In the opinion by Justice Field, it is said:

> "The United States, therefore, retained after the admission of the state only the rights of an ordinary proprietor, except as an instrument for the execution of the powers of

> the general government; that part of a tract which was actually used for a fort or military post, was beyond such control of the state by taxation or otherwise as would defeat its use for those purposes. So far as the land constituting the reservation was not used for military purposes, the position of the United States was only that of an individual proprietor. The state could have exercised, with reference to it, the same authority and jurisdiction which she could have exercised over similar property held by private parties."

In discussing the power of the United States to purchase land for forts, etc., the court further said:

> "Where lands are acquired without such consent, the possession of the United States, unless political jurisdiction be ceded to them in some other way, is simply that of an ordinary proprietor. The property in that case, unless used as a means to carry out the purposes of the government, is subject to the legislative authority and control of the states equally with the property of private individuals."

The court again points out that forts, arsenals and other public buildings for the use of the general government as instrumentalities for the execution of its powers, must, of necessity, be free from state jurisdiction, and that this exemption is essential to the sovereign authority of the United States, and adds:

> "* * * But when not used as such instrumentalities, the legislative power of the state over the places acquired will be as full and complete as over any other places within her limits."

In *Mobile vs. Eslava*, 16 Peters, 277, the court emphasized the fact that the United States hold land as an individual, and said:

> "The clause inserted into the Constitution of Alabama reserving the rights of property to the United States as a compact with them, embraces lands under water as emphatically as those not covered with water; but if no stipulation saving the interest of the United States had been made, they would have had just as much right to their private property as an individual had to his. They held as a corporation an individual title. * * * The United States as owner can do no act to obstruct the free public use of waters more than a private owner of the soil under water could obstruct the navigation."

In the case of *People vs Godfrey*, 17 Johns, 225, it was held that the state of New York had criminal jurisdiction over land used by the United States as a fort, no cession having been made by the legislature. The court said:

> "We are of the opinion that the right of exclusive legislation within the territorial

> limits of any state can be acquired by the United States only in the mode pointed out in the Constitution, by purchase, by consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock yards and other needful buildings."

It can hardly be claimed that a forest reserve, however beneficial, is in fact an instrument of government and necessary to the exercise of national sovereignty.

Even in those cases in which there is a cession of jurisdiction by the state subsequent to the adoption of a fence law, the law prevails on such lands until repealed by the general government. This is directly held in the case of

> C., R. I. & P. Ry. Co. vs. McGlinn, 114 U. S., 542,

which also involved the Fort Leavenworth reservation. Kansas, by statute, made every railroad company in the state liable for the full value of cattle killed on a railroad unless the road was fenced. This law was invoked in a suit for the killing of an animal on the reservation. The court said:

> "The government of the state of Kansas extended over the reservation, and its legislation was operative therein except so far as the use of the land as an instrumentality of the general government may have excepted it from such legislation. In other respects, the law of the state prevailed.

> There was a railroad running through it when the state ceded jurisdiction to the United States. The law of the state making the railroad liable for killing or wounding cattle by its cars and engines where it had no fence to keep such cattle off the road, was as necessary to the safety of the cattle after the cession as before, and was no more abrogated by the mere fact of cession than regulations as to the crossing of highways by the railroad cars and the ringing of bells as a warning to others of their approach."

If the fence law would thus apply on territory of which the jurisdiction had been ceded by a state, it certainly is not ousted by the mere act of reserving public lands for forestry purposes.

These authorities establish, beyond question, the fact that the ownership by the general government of land within a state, does not carry with it general rights of sovereignty over such lands.

It is further urged that congress, under the power granted by paragraph 2, section 3, of article IV of the Constitution, has authorized the reservation of lands and the making of rules, under which the decree is justified.

That paragraph reads as follows:

> "The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other

> property belonging to the United States, and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular state."

In support of this contention, counsel for appellee in the court below cited many cases in which this provision was considered, and in which very broad powers were claimed for congress as arising from it. But those cases all had to do with the question of right to control and dispose of public lands, matters concerning the passing of title and methods of disposition. None of them involved this question of jurisdiction; and it is believed no case can be found in which the provision in question has been held to confer upon congress the right to limit the general powers of a state. Of this provision, the court, in *Kansas vs. Colorado, supra,* said:

> "Clearly, it does not grant to congress any legislative control over the states, and must, so far as they are concerned, be limited to authority over the property belonging to the United States within their limits."

Manifestly, if the federal government has jurisdiction over these reservations to the extent necessary to support this decree, the state is deprived of its police power over a large portion of its territory. That the police power of a state extends over all of its territory and is exclusive, is well settled.

> "Police power extends over all subjects within the territorial limits of the state, and

has never been conceded to the United States."

Prigg vs. Commonwealth, 16 Peters, 639.

"Police power is exclusive in the several states."

The Slaughterhouse Cases, 16 Wall., 63.

"A state's police power is inherent and not surrendered to the general government, nor restrained by the Constitution."

In re Rehrer, 140 U. S., 554.

"It cannot be denied that the power of a state to protect the lives, health and property of its citizens and to preserve good order and the public morals, the power to govern men and things within the limits of its dominion, is a power originally and always belonging to the states, not surrendered by them to the general government, nor directly restrained by the Constitution of the United States, and essentially exclusive."

United States vs. Knight, 156 U. S., 11.

To the same effect:

L'Hote vs. New Orleans, 177 U. S., 597.

This construction of the statute for which we contend is not in conflict with the case of United

States vs. Camfield, 167 U. S., 518, in which the right of Congress to prohibit the fencing of public lands by persons without interest therein was upheld. To enclose land is to assert an exclusive right to its use, and is, therefore, in a sense a taking of possession of it. Indeed, the act under consideration in that case was entitled: "An act to prevent unlawful occupancy of the public lands."

Such an enclosure is, of course, an interference with the right of control and disposition which is admittedly in Congress. Thus to prohibit fencing land is to legislate as to what shall be done with or upon the land; while the decree in this case determines what the appellant shall do outside the reservation. Its effect is to compel him to keep his cattle within an enclosure, or so to herd them that they will not go upon the reserve. This is not the enforcement of an act of Congress, but the application of a rule of equity, that continued trespassing may be enjoined—an assumption, necessary to the decree, being that an act is a trespass, which, under the law of the state, is no trespass.

It should be observed that in the case last cited, the court fully recognizes that in prohibiting fencing the government is exercising only the rights of an ordinary proprietor. It says:

> "While the lands in question are all within the state of Colorado, the government has, with respect to its own land, the rights of an ordinary proprietor to maintain its possession and to prosecute trespassers. It may deal with such lands precisely as an ordinary individual may deal with its

farming property. It may sell or withhold them from sale. It may grant them in the aid of railways or other public enterprises. It may open them to pre-emption or homestead settlement; but it would be recreant to its duties as trustee for the people of the United States to permit any individual or private corporation to monopolize them for private gain, and thereby practically drive intending settlers from the market. It needs no argument to show that the building of fences on public lands with intent to enclose them for private use would be a mere trespass, and that such fences might be abated by the officers of the government or by the ordinary processes of the courts of justice. To this extent no legislation was necessary to vindicate the rights of the government as a landed proprietor.

"But the evil of permitting persons who own or control alternate sections to enclose the entire tract, and thus to exclude or frighten off intending settlers, finally became so great that Congress passed the act of February 25, 1885, forbidding all enclosures of public lands and authorizing the abatement of the fences. If the act be construed as applying only to fences actually erected upon public lands, it was manifestly unnecessary, since the government as an ordinary proprietor would have the right to prosecute for such trespass. It is only by treating it as prohibiting all enclosures of public lands, by

whatever means, that the act became of any value."

It should not be overlooked that the court bases the right to prevent the fencing of public lands upon the fact that such fencing would retard the settlement of the lands, which is the purpose for which the government holds them as a trustee.

The result of this decree, as before stated, is, that state laws passed in the exercise of the police power are not operative on the public domain. This, in fact, is claimed to be the ruling of the Circuit Court of Appeals of the Ninth Circuit, in Shannon vs. United States, 88 C. C. A., 52.

That case, however, is not authority to the effect claimed. It there appeared that the appellant had turned between 3,000 and 3,500 sheep into a field of 320 acres, without water, and separated from the reserve, with good grazing and water, only by a wire fence which had been, as appears from the statement of facts, opened in several places by appellant himself. The court found that his acts as above stated were equivalent to driving his stock upon the reserve. To drive one's cattle upon the land of another without his consent is a trespass, whether the land be fenced or not. So much, therefore, of the opinion as may be supposed to state the law in a case with facts like those under consideration, not being necessary to a decision of the case, is mere dictum and is supported by no adjudged cases. It is, therefore, not authority in this cause.

No one, it is presumed, will deny that a statute concerning fences and the trespasses of live stock is proper legislation under the police power of the state. It is everywhere thus treated and comes clearly within the definition of police power, as applied in Bacon vs. Walker, 204 U. S., 317, which involved a law prohibiting the pasturing of sheep within a specified distance of a dwelling house.

Rideout vs. Knox, 148 Mass., 368, holds that an act prohibiting the erection of a fence "unnecessarily exceeding six feet in height" is within the limits of the state's police power.

This decree is contrary not only to the statutes of the state concerning fencing and live stock, but to the law as laid down by the state Supreme Court prior to the adoption of these laws. As early as 1880, in Morris vs. Fraker, 5 Colo., 425, it was held that the common-law rule requiring stock owners to keep their stock within their own grounds was not applicable to the conditions in Colorado, and hence that law was not in force. Cases subsequent to the adoption of the fence law are to the same effect, the statute not being invoked to sustain the rule. The recent case of Richards vs. Sanderson, 39 Colo., 278, makes no reference to statutory law. The court says:

> "One who turns his cattle out to graze unrestrained upon lands where he has a right to turn them, knowing that they will probably wander on the uninclosed premises of another, is under no obligation to prevent them entering upon such premises, and if

> they do so enter, through following their natural instincts, he is not responsible for the damages occasioned thereby—Martin vs. Platte Valley Sheep Co., supra. This proposition is clearly applicable to the case of one who does no more than turn his cattle upon the public domain to graze, even though he knows that, following their natural instincts, they may wander upon the uninclosed lands of his neighbor."

In *Buford vs. Houtz*, 133 U. S., 320, the court held that the common-law rule above mentioned was not adapted to the conditions existing in this country in the progress of settlement, and was not, therefore, in force—citing cases from the courts of several states, both east and west.

The effect of these rulings is to permit the owners of cattle to allow them to range at will; and the decree under consideration thus denies to stockmen the rights to which the state courts have held them entitled under the common law, as modified to suit local conditions.

In 1885 a fence law was enacted, but it did no more than express in statutory form what was already the law of the state, except so far as it defined a lawful fence. (Session Laws 1885, page 220; sections 2987 et seq., R. S. Colo., 1908.)

The gist of the statute is that damages from trespass by animals are not recoverable unless the premises on which such trespass occurs are enclosed by a lawful fence as therein prescribed. In view of the fact that this law of free range had, prior to the adoption

of the statute, been judicially determined to be in force in this state and in the states generally, a statute which is merely declaratory of the existing law can be construed as exempting any portion of the state from its operation only in case such exemption is made by express terms.

The rule in this case, as in others, must be that exemptions are not implied. The statute, therefore, must be taken for what it clearly appears to be—a general law operating throughout the entire state.

Moreover, thus to limit the jurisdiction of states containing forest reserves is to deny to them that equality with other states to which they are entitled.

> "Equality of constitutional right and power is the condition of all the states of the Union, old and new."
>
> Escanaba Co. vs. Chicago, 107 U. S., 678.

In *Ward vs. Race Horse,* 163 U. S., 504, it is held that to give effect to an Indian treaty so as to prevent the operation of a state game law, is to deny to the state equality with other states. Hence it was held that the treaty was abrogated by the act admitting the state into the Union.

The court, after asserting the equality of the states, said:

> "Determining by these principles the question whether the provision of the treaty

giving the right to hunt on unoccupied land of the United States, in the hunting districts, is repealed, insofar as the lands in such districts are now embraced within the limits of the state of Wyoming, it becomes plain that the repeal results from the conflict between the treaty and the act admitting the state into the Union. The two facts—the privilege conferred and the act of admission—are irreconcilable in the sense that the two, under no reasonable hypothesis, can be considered as co-existing.

"The power of all the states to regulate the killing of game within their borders will not be gainsaid. Yet, if the treaty applies to the unoccupied land of the United States in the state of Wyoming, that state would be bereft of such power, since every parcel or piece of land belonging to the United States as a private owner, so long as it continues to be unoccupied land, would be exempt in this regard from the authority of the state. Wyoming, then, will have been admitted into the Union, not as an equal member, but as one shorn of the legislative power vested in all the other states of the Union—a power resulting from the fact of statehood and incident to its plenary existence."

It will be observed that the court here speaks of the public land of Wyoming as "belonging to the United States as a private owner," which supports

the contention heretofore made in this case. It would be difficult to determine upon what principle the right of a state to enact and enforce a game law would be held of greater value and importance than the right to determine what should constitute a trespass committed by live stock.

If, to uphold the sovereignty of a state in the matter of a game law, a treaty made by Congress is held to be repealed as inconsistent with the higher right in the state, it would seem to be necessary that those who assert that the mere ownership of land by the federal government, or the necessities of a policy adopted by the head of a department, abrogate a sovereign right of a state, should produce some authority, express and positive, for such contention. How large a portion of Wyoming would have been exempted from the operation of the game law does not appear, but as the court holds that they were restricted to hunting districts, it is probable that the area covered was not large. This court will take judicial notice of the proclamations of the president which have set aside as forest reserves within the state of Colorado an area of 21,309 square miles, more than one-fifth of the area of the state.

In the case of *Kansas vs. Colorado, supra,* the court admits that the national government cannot enter the territory of one of the newer states and legislate in respect to improving by irrigation or otherwise lands within their borders, unless it has the same power in the older states.

If the exemption claimed for the forest reserves is good in the state of Colorado, a like exemption would be good in the state of New York in case the

government became the owner in fee of lands therein. Yet, we have seen from the cases cited that the courts uniformly deny that such would be the case.

This court has always recognized the fact that an act of Congress cannot restrict the sovereignty of a state except under express constitutional authority therefor.

In Withers vs. Buckley, 20 Howard, 84, the court said:

> "In considering this act of Congress of March 1, 1817, it is unnecessary to institute any examination or criticism as to its legitimate meaning or operation, or binding authority, farther than to affirm that it could have no effect to restrict the new state in any of its necessary attributes as an independent sovereign government, or to inhibit or diminish its perfect equality with the other members of the confederacy with which it was to be associated. These conclusions follow from the very nature and objects of the confederacy, from the language of the Constitution adopted by the states, and from the rule of interpretation pronounced by this court in the case of Pollard's Lessee vs. Hagan, 3 How., 223."

Every question of constitutional power must be resolved so as not to conflict with other powers which are established, defined and undoubted.

The equality of the states under the federal Constitution is fundamental—a part of the very structure of our system of government. It is guaranteed

by statute and exists without statute (Ward vs. Race Horse, supra). It is a limitation on every implied power which otherwise would infringe upon the rights of a state.

Any constitutional provision which requires a construction to determine its scope must necessarily be so limited in its application as not to conflict with this positive and thoroughly determined fact of equality.

The authority of Congress to dispose of and protect public lands, which has frequently been judicially asserted, must therefore be so limited as not to deprive one state of an attribute of sovereignty which is conceded to other states.

Inasmuch as national forest reserves have been established in several of the western states, covering in one instance at least a larger portion of the state's area than is involved in Colorado, the question here raised is of the utmost importance to such states.

Indeed, the question is important to all the states as determining the proper relation of the states to the general government. If the jurisdiction of a state is ousted by the fact of federal ownership, or, by an act of Congress, as to one police regulation of the state, it is ousted as to all such regulations. Accordingly, if forest reserves are exempt from the application of the fence law, they are not subject to laws concerning branding, inspection of live stock and other regulations. In fact, it would seem that none of the state laws would be in force on forest reserves.

Congress itself, in the act of June 4, 1897, recognized that these reserves must continue under state jurisdiction:

> "The jurisdiction, both civil and criminal, over persons within such reservations, shall not be affected or changed by reason of the existence of such reservations, except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the state wherein any such reservation is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the state."
>
> (Stat. L., 36.)

It is clear, then, that there is no such exemption in Colorado, and that the decree here under consideration, being necessarily based upon such a supposed exemption, was erroneous.

II.

If it be found that our first contention is well grounded, the second question named for discussion need not be considered; but if, on the other hand, it be held that the state laws do not extend over a legally established forest reserve, the second question is still important and must be determined.

That question is: Have the lands described in the president's proclamation as constituting the Holy Cross Forest Reserve been legally set apart as a per-

manent disposition thereof for the purposes in said proclamation mentioned?

This, of course, involves the power of Congress to authorize such a reservation. If there is such power in Congress, a further question is presented as to whether or not it can be exercised within a state without the state's consent.

The question of power is first to be considered.

Here, as in regard to exemptions from state laws, it is necessary that the provision from which the power is derived should be definitely pointed out. It can, of course, be based on no other than the constitutional provision already discussed. If the power of disposition granted by that section includes the right permanently to withdraw these immense areas of public lands from settlement, and to devote them to growing trees, cutting lumber, pasturing cattle at a charge, and otherwise making them a perpetual source of revenue to the general government, it has never been so treated by this court in any of the numerous cases in which the section was under consideration. The very definition of public lands contradicts such a proposition. Lands thus defined are those which are open for sale or other disposition under general laws.

Newhall vs. Sanger, 92 U. S., 761.

Bardon vs. N. P. R. R. Co., 145 U. S., 535.

The uniform holding of this court has been that the government holds public land in trust for the people, to be disposed of so as to promote the settlement and ultimate prosperity of the states in which they are situated.

"The United States do not and cannot hold property as a monarch may, for private or personal purposes."

Dobbins vs. Commissioners, 17 Peters, 435.

"Although the title to the soil under the tide waters of the bay was acquired by the United States, by cession from Mexico, equally with the title to the upland, they hold it only in trust for the future state."

Weber vs. Commonwealth, 18 Wall., 57.

"Public domain is held by the government as a part of its trust. The government is charged with the duty and clothed with the power to protect it from trespass and unlawful appropriation, and under certain circumstances to invest the individual states with the sole possession of the title, which until then had been common with the people as the beneficiaries of the trust."

U. S. vs. Beebee, 127 U. S., 348.

"Territories acquired by Congress, whether by deed or cession from the original states, or by treaty with a foreign country, are held with the object, as soon as their population and condition justify it, of being admitted ito the Union as states upon an equal footing with the original states in all respects."

Shively vs. Bowlby, 132 U. S., 49.

The last quotation, although referring to the political divisions known as territories, necessarily involves a recognition of the trust which we are discussing, and of occupation and settlement of the public domain within the territories, without which the object of admission into the Union as states could, by no possibility, be effected.

> "In the matter of disposing of the vacant coal lands of the United States, the government should not be regarded as occupying the attitude of a mere seller of real estate for its market value. It is not to be presumed that the small price per acre required from those desiring to obtain title to such lands had any influence in determining the policy to be adopted in opening them to entry. They were held in trust for all the people; and in making regulations for disposing of them, Congress took no thought of their pecuniary value, but, in the discharge of a high public duty and in the interest of the whole country, sought to develop the material resources of the United States by opening its vacant coal lands to entry by individuals and by associations of persons, at prices below their actual value."
>
> United States vs. Trinidad Coal Co., 137 U. S., 160.
>
> See also Pollard, Lessee, vs. Hogan, supra.

This inquiry as to constitutional authority to establish and preserve forest reserves presents one aspect of the question concerning the reclamation of arid lands which was considered in the case of Kansas vs. Colorado, *supra*. The court there said:

> "At the time of the adoption of the Constitution within the known and conceded limits of the United States there were no large tracts of arid land, and nothing which called for any further action than that which might be taken by the Legislature of the state in which any particular tract of such land was to be found, and the Constitution, therefore, makes no provision for a national control of the arid regions or their reclamation. But, as our national territory has been enlarged, we have within our borders extensive tracts of arid lands which ought to be reclaimed, and it may well be that no power is adequate for their reclamation other than that of the national government. But if no such power is granted, none can be exercised."

So here, when the Constitution was adopted, the energies of the country were largely devoted to clearing the land of trees, and no one then supposed that the time would come when the preservation of great forests would be regarded as necessary, much less that it would be considered a governmental function. Consequently, it is useless for us to look for a grant of power which may be supposed intentionally to include the authority now under discussion.

It should be observed that national authority to reclaim arid lands may be sustained, if at all, on the broad ground that their reclamation is an aid in disposing of them, which is the purpose for which they are held. Reservations, on the contrary, are in effect an abandonment of the purpose of disposing of the lands included therein.

That the power to establish these reserves may be highly desirable, and that it can be more effectually exercised by the federal government than by the states, need not be denied—though the latter proposition is not here admitted—yet, that affords no ground for asserting the existence of the power. As was pointed out in the case last cited, this is a government of enumerated powers, and the doctrine of inherent powers, which has in recent years been revived by men high in authority, finds no support in the rulings of this court.

No grant of power having been made, if it exists, it is by implication. But it cannot be implied without conflict with the principles laid down by this tribunal.

To withdraw these vast tracts from settlement and devote them to profit-making for the government is to violate the trust under which they are held. It has never been supposed that public lands are to be treated as property of the government from which profit is to be made. All the people of the country are beneficiaries of the trust because all have equal right to acquire land upon the liberal terms prescribed, and all share in the general benefits to the nation resulting from the settlement and use of the lands. These benefits, however, are not to reach the people through the treasury of the United States by

a decrease in taxation due to increase in the government's income. Nor are they to come from cheaper lumber or power for manufacturing. They come to us as a nation primarily through increase in the strength of the nation in the way contemplated by the trust—the other advantages being merely incidental.

To dispose of land for this purpose of strengthening and extending the nation is as truly a governmental function as to hold it for forts, arsenals or navy yards. It causes no conflict with the rights of states, results in no system of governmental landlordism, and places no part of the country under the rule of departmental bureaus hundreds of miles distant. It is a system wrought out by a long line of statesmen, approved by the courts, sanctioned by usage, and thoroughly American.

Not only does the system of national forest reserves violate the trust concerning public land, but it denies to the states in which such reserves are established the equality with other states to which they are entitled.

This is not a mere re-statement of the proposition hitherto discussed. The rights of the states concerned are violated in repects other than those mentioned. One of these rights is to have public lands open to settlement and improvement, as they were in the older states which contained such lands. The withdrawal of lands from entry checks the growth of the state, retards its increase in wealth and narrows the basis of taxation. Other states were left free to develop through the settlement of public lands within their borders—the settlers having free pasturage upon such lands and timber therefrom for

their necessities—until the entire area of lands having any value became private property—a source of benefit to the whole state, and of direct revenue to its treasury.

Every state, when admitted into the Union, was entitled to enjoy these advantages and means of development, the furtherance of which was the purpose of the trust in question. To withdraw large bodies of land is to deprive a state of these advantages and to deny to it this constitutional equality with other states.

This view of the question has more than an academic interest. With one-fifth of its area withdrawn from development and permanently exempt from taxation, the state of Colorado has been curtailed of its right to develop and secure increase of revenue. Its citizens residing on the borders of these reserves see their hopes of enlarged facilities for business, education and social intercourse thwarted, and the right, elsewhere freely enjoyed, of making use of the natural resources of the country, denied.

Where, then, can be found the unquestioned and unquestionable grant of power which overcomes these manifest objections?

In the language of the Report of the House Judiciary Committee to the Sixtieth Congress (Report 1541), denying the right of the government to purchase land for forest reserves, "an express power must first be found which can be executed by the acquisition" (in this case the reservation) "of lands for forestry purposes."

What is the legitimate end, within the scope of the Constitution, which is to be subserved by this system of reserves?

The proposition, as generally stated, is to conserve the national resources; that is, to provide for a continuing supply of timber, regulate the flow of streams and preserve power sites from being monopolized (30 Stat. L., 34).

It will hardly be contended that this subject is within the scope of the general welfare clause of the Constitution, since it is agreed that the authority granted "to provide for the common defense and general welfare" is confined to taxation for the purposes mentioned. The clause does not grant to Congress a general power to legislate for the common welfare, or in any way extend its powers.

Story on the Const., sections 907-908.
Tucker's Const. of United States, section 222.

But, if the power in question exists, can it be exercised without the consent of the states directly affected?

Our system of government knows no such thing as a divided territorial sovereignty. In the District of Columbia, the territories, and those places which have been purchased for arsenals, forts, etc., with the consent of the state, the federal government has exclusive jurisdiction. In the rest of the country, as to all local affairs, the states are sovereign.

The first paragraph of the section now under consideration requires the consent of the states concerned as a condition to the forming of new states within the jurisdiction of other states, or from two or more states or parts of states. Yet, if the appellee's contention is well founded, there may be set up within a state, and without its consent, what is in effect a territory.

The total of forest reserves in Colorado is equal to the area of the states of Connecticut, New Hampshire and Massachusetts. If this great tract is withdrawn from the operation of state laws, if any government at all exists thereon, it must be by virtue of national sovereignty, and, hence, it amounts to a Federal Territory.

This, alone, shows that the contention cannot be sustained.

The avowed purposes of creating these reserves do not fall within a constitutional grant, and are better promoted by the states, which have undoubted authority in the premises. Each state ought to be permitted for itself to determine—subject to the right of Congress to dispose of public lands—how the natural resources within its borders shall be used.

It has been well said that men are worth more than trees, and the best products of a nation like ours are men who have the courage, strength and skill to carve homes out of the wilderness and make the desert to blossom as a rose. No nation of mere tenants ever became a free people. It is of infinitely more importance to us that the public lands become the homes of liberty-loving citizens than that the supply of timber for unborn generations should be conserved, or that the national revenues be increased by a few paltry millions.

To this court is committed the high duty of determining what are the constitutional relations between the states and the nation. In so doing, it has always acted, not as the agent of the federal government to expand its authority or aid it in acquiring new powers, but rather as an arbiter, without interest or bias, by judicial determination to maintain unim-

paired the rights granted to each by the great charter of government constructed by the fathers.

In the discharge of this duty, doubtless the court will at all times bear in mind the declaration which it has itself made, that:

> "State rights and the rights of the United States should be equally respected. Both are essential to the preservation of our liberties and the perpetuity of our institutions."

And that:

> "Unrest, disquiet and disturbance will always arise among a people jealous of their rights, from the exercise by the general government of powers they have reserved to themselves or to the states."

It is respectfully submitted that the decree of the Circuit Court is wrong and should be reversed.

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In the Supreme Court of the United States.

OCTOBER TERM, 1910.

FRED LIGHT, Appellant,
v.
THE UNITED STATES. } No. 360.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This suit was brought to put a stop to repeated and continuing trespasses by appellant's stock within the limits of the Holy Cross Forest in Colorado. The appellant admitted that he had not complied with, and did not intend in the future to comply with, the regulations of the Secretary of Agriculture, which, in the absence of an express written permit, prohibited such intrusions (rec., 13, 14, 264, fol. 473); but relied upon the State "fence law," which, after defining what shall constitute a "lawful fence," provides as follows:

> Any person making and maintaining in good repair around his or her inclosure, any

> fence such as described in section one of this act, may recover in a suit for trespass, before any court having competent jurisdiction, from the owner of any animal or animals which break through any such fence, in full for all damages sustained on account of such trespass, together with costs of suit; and the animal or animals so trespassing may be taken and held for security for the payment of such damages and costs; and no person or persons shall be allowed to recover damages for any injury to any crops or grass or garden products, or other vegetable products, unless the same, at the time of such trespass or injury, was inclosed by a legal and sufficient fence, as before described. (Laws, 1885, p. 221, sec. 3; Rev. St., 1908, sec. 2589.)

It is conceded that the reserve was not fenced.

The Government tried its case upon the theories, first, that by turning out his cattle from his ranch, under such circumstances that many of them naturally and inevitably would enter and remain within the reserve, the defendant was pursuing a practice which, in law, was tantamount to driving them there directly—a practice which the fence law itself does not countenance; second, that the fence law should be construed as fixing a standard of diligence to govern actions for damages between individuals, and should not be construed as intended to apply either to the State or the United States; and, third, that, if so intended, its attempted application to the United States would be ineffectual.

Nearly all of the evidence contained in the record has relation to the first of these propositions. The testimony of the Government's witnesses went to show that the conditions as to food and water about the appellant's ranch, where he turned out his stock each spring, were such that the stock could not find sustenance there through the grazing season, but, aided by topographical conditions, and by well-defined cattle trails leading directly from the ranch to the reservation, would, without fail, seek the abundant and superior grasses and water supply which the reservation afforded. This testimony was strongly contradicted by witnesses called for the defense.

Upon demurrer (rec., 9) and again on final hearing (rec., 292) the case went against the appellant. The decree (rec., 292) was general; and neither there, nor elsewhere in the record, is there any indication of how the lower court decided the issue of fact or upon which of the legal propositions involved it rested its conclusions.

The State of Colorado was not, and is not, a party to the suit, though the appellant is represented by its attorney general.

For the convenience of the court, the statutory provisions concerning the creation, purposes, and administration of forest reservations, and the regulations concerning live stock, are set forth in an appendix to the brief.

APPELLANT'S ARGUMENT.

The appellant's argument admits or assumes the truth of the following propositions:

(1) That if the prohibitory regulations complained of could lawfully have been made by Congress directly, then Congress committed no legal impropriety in empowering the Secretary of Agriculture to make them as its agent. In other words, no doubt is expressed on the score of delegated "legislative" power. This concession is deemed entirely sound.

In re Kollock, 165 U. S., 526, 533, 536.
Buttfield v. *Stranahan*, 192 U. S., 470, 492.
Union Bridge Co. v. *United States*, 204 U. S., 364.
Act of June 4, 1897, 30 Stat., 34; act of Feb. 1, 1905, 33 Stat., 628, section 5.

(2) That the regulations followed the authority which Congress intended to confer.

Shannon v. *United States*, 160 Fed., 870.
Dastervignes v. *United States*, 122 Fed., 30, 34.

From these premises appellant draws the conclusion that the regulations are to be regarded as tantamount to acts of Congress for the purpose of invoking the Constitution against them in favor of the State fence law with which he supposes them to be in conflict, and upon the hypothesis that in enforcing the regulations the court below necessarily acted at the expense of that law, this court is invited to take jurisdiction. The theory of the appellant here, though somewhat obscure, appears to involve the following propositions: That the State law should have been held su-

perior, (*a*) because the United States, as property owner, is subject to regulation by the State in the same measure as any private owner, and (*b*) because the municipal jurisdiction of the State extends throughout the reservation, and (*c*) because the acts of Congress which purported to authorize the making and management of the reservation, the act of the President in setting it aside, and the entire collection of rules and regulations adopted by the Secretary of Agriculture, are all and singular null and void, as infringements upon the sovereignty of the State of Colorado and as ill comporting with her sovereign equality in the sisterhood of States. Proposition (*a*) is of course denied by the Government. Of the truth of (*b*) there can be no doubt whatever; in his use of it, however, appellant merely begs the real question, which concerns not the *locus* of State jurisdiction but the subjects upon which it may operate; (*c*) is apparently founded in part upon the false assumption that (*b*) would be denied if (*c*) were not admitted, and in part, but quite vaguely, upon the idea that there is such a degree of injustice to the State in withholding from private acquisition and State taxation the large areas comprised in this and other reservations as actually to amount to a reduction of her sovereignty below the par of other States in which the public lands were more liberally granted away.

ARGUMENT FOR THE UNITED STATES.

The following propositions will be advanced:

I. It may be doubtful whether this court has jurisdiction of the appeal. The question of the

validity of forest reservations is one which the appellant has no standing to raise. The assertion of the competency of the State fence law to control the United States in the protection and in regulating the use of its property can hardly be said to present a constitutional question.

II. The fence law merely prescribes a rule of diligence to govern the relations of private landowners and cattle owners, by regulation of the remedies of the former against the latter. It was not intended to govern the relations of individuals to the Government and is incapable of being so construed.

III. Congress was duly empowered by the Constitution to protect the reservation from trespasses, to declare and regulate the uses to which it might be put, and to adopt regulations appropriate to those ends. Such were the regulations involved in this case. They were part of the supreme law of the land. The duty of the appellant to obey them and of the courts to enforce them was entirely independent of State laws.

I.

Has the court jurisdiction?

The appellant relies upon two propositions: (1) That the regulations were void because Congress had no power to create the reservation and carry out the forest-reserve policy within the State; (2) that, assuming (1) to be unsound, the regulations were none the less void, since Congress had no power to override the State fence law.

(1) The appellant has no standing to attack the reservation or the forest-reserve policy.

(*a*) He does not claim any right or interest in any of the lands reserved. Before the reservation he doubtless enjoyed a license of pasturage there. But this mere privilege, existing by the tacit acquiescence of the Government in respect of public lands "where they are left open and uninclosed and *no act of Government forbids this use,*" (*Buford* v. *Houtz*, 133 U. S., 320, 326; *Richards* v. *Sanderson*, 39 Colo., 270, 274), was unquestionably a privilege which the Government could take away. (*Shannon* v. *United States*, 160 Fed., 870, 873; *Frisbie* v. *Whitney*, 9 Wall., 187; *Yosemite Valley Case*, 15 Wall., 77.)

(*b*) The constitutionality of the reservation is attacked solely upon the ground of its supposed invasion of the rights and prerogatives of the State. But the State is not here objecting, and its supposed injury is no concern of the appellant.

Bacon v. *Walker*, 204 U. S., 311, 315.
Hatch v. *Reardon*, 204 U. S., 152, 160.
Budzisz v. *Illinois Steel Co.*, 170 U. S., 41.
Supervisors v. *Stanley*, 105 U. S., 305, 311.
Clark v. *Kansas City*, 176 U. S., 114, 118.
Lampasas v. *Bell*, 180 U. S., 276, 283, 284.
Cronin v. *Adams*, 192 U. S., 108, 114.

Budzisz v. *Steel Co.* was an action of ejectment in which the plaintiff in error as defendant below claimed that the entries and patents relied on by his opponent were void, upon the ground that at the times when they were made and issued the lands

were not subject to entry under the laws of the United States, being withheld by the stipulations of certain Indian treaties.

In dismissing the writ of error this court said (p. 44):

> Mere allegations to that effect, not based upon the facts of the case, do not create a case which we are authorized to review. The alleged invalidity of the entries and of the patents did not arise out of any alleged misconstruction or breach of any treaty, but out of the alleged misconduct of the officers of the Land Office in permitting the entries and in issuing the patents; and if any error was committed by the Circuit Court in dealing with that question, which we do not intimate, the proper course for the defendants was to have gone to the Circuit Court of Appeals.
>
> Moreover, the defendants did not connect themselves in any way with the Indian treaties, or with any of the parties to them; nor did they claim any rights under said treaties, or under any of the parties to them. In no true sense, therefore, can it be said that this is a case in which the validity or construction of any treaty made under the authority of the United States is drawn in question by a party having a rightful interest in such question.

In *Hatch* v. *Reardon* (204 U. S., at p. 160) it was said:

> But there is a point beyond which this court does not consider arguments of this sort for the purpose of invalidating the tax laws of a State on constitutional grounds. This limit has been fixed in many cases. It is that unless

> the party setting up the unconstitutionality of the State law belongs to the class for whose sake the constitutional protection is given, or the class primarily protected, this court does not listen to his objections, and will not go into imaginary cases, notwithstanding the seeming logic of the position that it must do so, because if for any reason, or as against any class embraced, the law is unconstitutional, it is void as to all. (*Supervisors* v. *Stanley*, 105 U. S., 305, 311; *Clark* v. *Kansas City*, 176 U. S., 114, 118; *Lampasas* v. *Bell*, 180 U. S., 276, 283, 284; *Cronin* v. *Adams*, 192 U. S., 108, 114.) If the law is valid when confined to the class of the party before the court, it may be more or less of a speculation to inquire what exceptions the State court may read into general words, or how far it may sustain an act that partially fails.

Lampasas v. *Bell* (180 U. S., 276) was a suit against the city of Lampasas upon certain bonds. The defendant in its answer set up, as a constitutional objection to the bonds, that the residents of a certain portion of the incorporated territory had been given no opportunity to be heard as to whether they should be included within the municipality and subjected to its power of taxation. Upon this ground it contended that the bonds were void under the fourteenth amendment. This court dismissed the writ for want of jurisdiction, observing (pp. 283, 284):

> But what concern is it of the plaintiff in error whether the residents of such territory were or were not given an opportunity to be

heard? It had no proprietary right or interest in "territory proposed to be incorporated;" *it* was put to no hazard of taxation without a hearing, nor can it stand in judgment for those who had such interest or were put to such hazard.

* * * * *

We said in *Clark* v. *Kansas City* (176 U. S., 114) (quoting from Cooley's Constitutional Limitations, sec. 196) that "a court will not listen to an objection made to the constitutionality of an act by a party whose right it does not affect, and who has therefore no interest in defeating it"—that is, a legal interest in defeating it. The objection of unconstitutionality of a statute must be made by one having the right to make it, not by a stranger to its grievance. "To this extent only is it necessary to go in order to secure and protect the rights of all persons against the unwarranted exercise of legislative power, and to this extent only, therefore, are courts of justice called on to interpose." (Wellington, petitioner, 16 Pick., 87, 96.)

It follows necessarily that the plaintiff in error has no legal interest in the constitutional question which it raised and upon which it claims the right to come directly to this court from the Circuit Court under section 5 of the act of 1891, *supra*. To permit it to come here directly from the Circuit Court would make a precedent which would lead to the destruction of the statute.

(*c*) Appellant's defense rests upon the claim that immunity from this prosecution is conferred by the

State fence law. If that immunity exists, it is not necessary to destroy the reservation and shatter the entire forest-reserve system in order to sustain it.

(2) As for the second proposition, viz: That the State law rendered Congress impotent to enact a legislative prohibition against trespassing on the reservation, there is grave doubt, to say the least, whether it suffices as a basis of jurisdiction.

(*a*) It can not be said with accuracy that the law was "*claimed* to be in contravention of the Constitution of the United States." Here was a general statute dealing with the rights of "persons" to recover damages in the State courts, and enacted years before the obnoxious regulations were ever thought of. It would be quite illogical to argue that such a law, though entirely innocent when enacted, became suddenly violative of the National Constitution through the action of the Secretary of Agriculture in adopting a set of regulations. Under the circumstances, if the regulations were upheld as a valid exercise of constitutional power, the only rational view of the State law was that, being general and not in terms applicable to the United States, it could not have been designed to extend to the matter with which the regulations dealt. The Government did not *claim*, in the pleadings or elsewhere, that the State law was unconstitutional; and there is no evidence whatever in the record that the court below so held. The clear inference is that it did not do so.

(*b*) Was "the constitutionality of any law of the United States * * * *drawn in question*," or "the

construction or application of the Constitution" *involved*? The Government contended that the regulations were a valid exercise of power by Congress. The appellant contended that they were not—because in conflict with the fence law. This branch of his argument assumes that prohibitory regulations would have been valid if the State had not made a conflicting rule. It is all important therefore that the assertion of such a conflict should rest upon a reasonable construction of the State law. Appellant proposes a construction which would produce the conflict; but is that construction even colorably supported by the law itself?

(*c*) If the lower court regarded the State law as not aimed at the Government, *eo instante* all reason and all propriety in passing upon its constitutionality vanished from the case. The record affords no support to the assumption that the constitutional question was even considered, unless that assumption be in turn based upon another, namely, that the court construed the statute as, by intention, applicable to the United States, which latter assumption must either be made without reference to whether such construction was right or wrong, or upon a finding by this court that it was correct, and a third assumption that the conclusion below must have been the same.

(*d*) This court has often decided (as will hereinafter be shown) that the control of the Government over the uses of its property, as over every other national subject, is immune from State interference.

This case scarcely calls for another decision to that effect. (*Rakes* v. *United States*, 212 U. S., 55, 58.)

II.

State fence law not intended to apply to the United States.

(1) This, like all similar laws (and whether they rest on statute or custom seems immaterial), is essentially a law which, analogous to the statutes of limitations, operates upon the remedy. Conceding the landowner's exclusive right of possession, and conceding also that the right is violated by any intrusion of live stock without his permission, the law nevertheless denies him a remedy, unless it appear that the trespass was one against which his own reasonable diligence could not have guarded. And the law itself declares what shall be the test of reasonable diligence, viz, the maintenance of a fence of specified efficiency. The law confers no right whatever upon the cattle owner. It gives him no permission to place his cattle upon the land of another, whether fenced or unfenced. It merely vouchsafes him a reasonable assurance of immunity from what, under the common law, would be the legal consequences of their trespassing, provided this shall have resulted from their straying and not directly from any act and purpose of his own. Or to put the explanation on a slightly different basis: Whilst the common law exacted absolute diligence from the stock owner and none from the landowner this law apportions the diligence, so to speak; for the landowner, if he would

protect his possession must either police his property or surround it with the statutory fence, and the stock owner, if he would escape liability must guard all "breachy" animals against whose assaults such a fence would prove an insufficient barrier. Such laws formerly obtained in practically all of the States; they may, of course, be repealed at any time by the State legislatures, and they have uniformly given way in the more thickly settled parts of the country with the increase of population and advance in agricultural development. (For a full discussion of this subject see *Buford* v. *Houtz*, 133 U. S., 320.)

In *Lazarus* v. *Phelps* (152 U. S., 81) this court, in construing such a statute of Texas, expressly held that it afforded no defense to one who put his cattle in such circumstances that they were bound to commit the trespass. It said (p. 85):

> The object of the statute above cited is manifest. As there are, or were, in the State of Texas, as well as in the newer States of the West generally, vast areas of land over which, so long as the Government owned them, cattle had been permitted to roam at will for pasturage, it was not thought proper, as the land was gradually taken up by individual proprietors, to change the custom of the country in that particular, and oblige cattle owners to incur the heavy expense of fencing their land, or be held as trespassers by reason of their cattle accidentally straying upon the land of others. It could never have been intended, however, to authorize cattle owners deliberately to take

possession of such lands and depasture their cattle upon them without making compensation, particularly if this were done against the will of the owner, or under such circumstances as to show a deliberate intent to obtain the benefit of another's pasturage. In other words, the trespass authorized, *or rather condoned*, was an accidental trespass caused by straying cattle.

See, also:

Sabine, etc., Ry. v. *Johnson*, 65 Tex., 389, 393.
Delaney v. *Errickson*, 11 Nebr., 533, 534.
Otis v. *Morgan*, 61 Iowa, 712.

In *Moore* v. *Cannon* (24 Mont., 316, 324) the court said of such a statute:

It could never have been intended, however, to authorize cattle owners deliberately to take possession of such lands and depasture their cattle upon them without making compensation, particularly if this were done against the will of the owner or under such circumstances as to show a deliberate intent to obtain the benefit of another's pasturage. In other words, the trespass authorized, or rather condoned, was an accidental trespass caused by straying cattle. If, for example, a cattle owner, knowing that the proprietor of certain lands had been in the habit of leasing his lands for pasturage, should deliberately drive his cattle upon such lands in order that they might feed there, it would scarcely be claimed that he would not be bound to pay a reasonable rental. So, if he lease a section of land adjoining an uninclosed section of another and

> stock his own section with a greater number of cattle than it could properly support, so that in order to obtain the proper amount of grass they would be forced to stray over upon the adjoining section, the duty to make compensation would be as plain as though the cattle had been driven there in the first instance.

The case of *St. Louis Cattle Co.* v. *Vaught* (1 Tex. Civ. App., 388) was an action brought to recover damages for a trespass upon certain lands inclosed under one fence with lands belonging to the owner of the cattle. In passing upon the question the court said (p. 390):

> In this State, on account of the condition which has existed from time immemorial of the grazing lands, the owner of such property can not complain as long as it remains a portion of the "commons," that the cattle of another should roam over it and graze upon it at will. (*Davis* v. *Davis*, 70 Tex., 123; *Buford* v. *Houtz*, 133 U. S., 320.) This doctrine, however, does not authorize the owner of cattle, by affirmative conduct on its part, to appropriate the use of such lands to his own benefit. He will not be permitted thus to ignore the truth that everyone is entitled to the exclusive enjoyment of his own property. In this case the appellant, by means of fences constructed or maintained by it, inclosed the land of the appellee in such manner as to reap from it those benefits which, as a rule, are incident exclusively to ownership. The use and enjoyment of the property under such circumstances imports necessarily the idea of liability.

In passing upon a similar statute, the Supreme Court of Kansas in *Larkin* v. *Taylor* (5 Kans., 433) said on page 446:

> It is not to protect a wanton trespasser, or a man who shows rather an intention to injure his neighbor, than to enjoy the benefits the law allows him. Such conduct would not be negligence or carelessness in the ordinary acceptation of those terms. It would not be a mere heedless inattention, but a willful or wanton trespass not intended to be protected by our fence laws. But when the plaintiff in a case abundantly shows a want of care which the law requires on his part, he can not recover from a defendant chargeable only with a like want of care. He must show that the defendant's negligence was so gross as to amount to a willful or malicious want of care, to entitle him to recover, and the law should be so explained to the jury.

In the case of *U. P. R. Co.* v. *Rollins* (5 Kans., 167) the court, on page 176, said:

> There is no statute that expressly authorizes cattle to run at large anywhere, and there is no statute, as we think, that either expressly or impliedly authorizes them to run at large upon other people's land, the property of private individuals. It is true that the fence laws, stray laws, and the laws regulating the running at large of stock, already referred to, impliedly authorize cattle to run at large; but it can not be supposed that the legislature thereby intended to authorize them to run at

large on the private property of individuals. The legislature can not dispose of private property in that way. Private property can be taken by the legislature for *public use* only, and that after *just* compensation has been made for the same to the owner thereof. The legislature, by these acts, simply authorized cattle to run at large upon such *public* lands as they had a right to dispose of in that way. These statutes, referred to, specify what shall be lawful fences, modify the common law in some respects as to the damages that shall be recovered, and the remedies that must be resorted to with respect to trespassing animals, and in some cases prohibit stock from running at large, and in other cases impliedly permit them to do so, and have probably so modified the common law that no action lies for injuries done on real estate by trespassing cattle unless such real estate is inclosed with a lawful fence.

The owner of real estate does not use reasonable and ordinary care and diligence to protect his property from the intrusion of roaming cattle unless he incloses it with a lawful fence. And if he receives any injury through the want of such lawful fence, he is in about the same condition as though he received injury in any other way through his own negligence. He is like the man who has not used the proper diligence to collect a promissory note, but has allowed the statute of limitations to run against it and bar its recovery. He is without a remedy. But because he is without a remedy—because he has forfeited his remedy by his own negligence, he has not thereby lifted up the wrongs

> and trespasses of others upon his own rights, to be moral virtues, or legal rights to be protected and encouraged by law, as seems to be supposed by the plaintiffs below in this case.

(2) It has also been expressly held by the highest court of Colorado that the willful and deliberate driving of cattle upon the premises of another is actionable. In *Nuckolls* v. *Gaut* (12 Colo., 361) an action for trespass by the landowner against the cattle owner, in which the plaintiff prevailed below, the court said (p. 362):

> Not having the evidence before us, we must presume that it was sufficient, under the law as pronounced by the court, to warrant the jury in returning the verdict they did. Defendant in error may, for aught we know, have had a good and sufficient fence, or the evidence may have shown that plaintiff in error willfully and deliberately drove his cattle upon the premises of defendant in error for the purpose of inflicting the resulting injury. The judgment is affirmed.

See, also:

> *Norton* v. *Young,* 6 Colo. App., 187.
> *Fugate* v. *Smith,* 4 Id., 201, 203.
> *Sweetman* v. *Cooper et al.,* 20 Id., 5; 76 Pac., 925.

(3) As the essential purpose of the law is to make the enforcement of a property right dependent upon the exercise of diligence, its application to the state is precluded upon the same principle and for the same reasons which operate to except it from stat-

utes of limitation and the doctrine of laches and prescription.

Suppose that the State of Colorado, out of a desire to improve the grazing upon its own lands, were expressly to revoke any license of pasturage that may be assumed to exist in respect of those lands—or, to put the case more strongly, suppose that a public park, adorned with lawns and flower gardens, or a State experimental farm, with fields of grain and other crops, were created by State authority—would the individual stock owner be under no duty to prevent his animals from injuring or destroying this public property and thwarting the public plan by their repeated tresspasses? Would it suffice for him to say that the State legislature, or its officials or employees, had not been diligent in providing a "statutory" fence? Rather should it be held that the individual rested under an obligation to assist in the protection of the public property, at least to the extent of saving it from the injurious influences under his own control. If this statement be not true, then the keepers of the supposed park or farm would be powerless to drive invading animals a foot beyond the boundary without becoming themselevs lawbreakers and subject to an action for damages—and this even though it were shown that the owner knew in advance that the animals would probably commit the trespass. (*Richards* v. *Sanderson*, 39 Colo., 278.)

(4) Now, even if it were possible to admit that the United States as a property owner is subject to the

same control by the State as individuals are, must it be conceded also, that to the mind of the State legislature the character and functions of the Nation are lost in the general conception of ownership? Should not even the most ardent advocate of this ~~statutory~~ startling theory be forced on his part to the admission that, as the power is most delicate and extraordinary, so the legislative intention to employ it can never be derived from general laws purporting to define the relations or regulate the legal remedies of mere "persons"? For reasons sufficiently obvious, the search for an authority expressly declaring this suggested rule of construction has not been successful.

III.

The regulations were a valid exercise of constitutional power. It was the duty of the individual to obey them and of the courts to enforce them without regard to State laws.

(1) Before proceeding further, it may be well to clear away certain misunderstandings which pervade the opposing brief.

(*a*) *The power to create and administer the reservation is not properly in question.*

The appellant had no interest in the lands before they were reserved, nor any right to go upon them, other than the implied license of pasturage, which was clearly revocable by Congress at any time and the legal effect of which was no more than to render lawful what would otherwise have been a trespass. The sum of the supposed congressional offending is

in laying upon him a positive duty to prevent his stock from crossing the reservation line. If Congress had no right to impose such a duty, the appellant's grievance would be entirely satisfied by a decision simply to that effect. If Congress had that right, the offensiveness of the reservation to the assumed rights and prerogatives of the State is, so to speak, *res inter alios*—no concern of the appellant's, who does not represent the State and has himself been subjected to no legal injury. The utter lack of relation upon the part of the appellant to this supposed constitutional question is palpably apparent when it is considered that were the appellant's cattle forcibly excluded by the Government, he would have confessedly no ground to complain, although the reservation would persist and its administration would go on in all other respects substantially unchanged. This subject has been fully discussed *supra*.

(*b*) *The municipal sovereignty of the State within the reservation is not in question.*

No one for the Government has contended that the municipal jurisdiction of the State flowed any the less freely over the territory affected after the reservation was effected than before. The State has ceded no such jurisdiction to the United States and the United States reserved none at the time of her admission to the Union. Article 1, section 8, of the Constitution is inapplicable. Over the reservation as a *locus* the jurisdiction of the State, including the police power, is the same as elsewhere within her

boundaries. The incapacity of the State law to accomplish what the appellant desires of it in this case is due not to any curtailment of State sovereignty within the reservation, but to the impotence of State laws anywhere to deprive the United States of control over its own property or to interfere in its management of this subject of purely Federal concern. The circumstance that the Federal subject here involved is land probably is responsible for this peculiar misconception in appellant's brief, which would not have existed if the case had concerned the control or use or protection of personal property belonging to the United States. The Federal property, considered as such, whatever be its nature or location, is simply detached from the subject-matter upon which the State laws may operate. Considered again *as property*, it is as remote from the State's jurisdiction as though it were removed entirely beyond her territorial confines—except as Congress may properly be held, expressly or impliedly, to have assented to a different relation.

> We take it to be a point settled beyond all contradiction or question that a State has jurisdiction of all persons or things within its territory which do not belong to some other jurisdiction, as the representatives of foreign Governments, with their houses and effects, and property belonging to or in the use of the Government of the United States. (*Coe* v. *Errol*, 116 U. S., 517, 524; *Van Brocklin* v. *Tennessee*, 117 U. S., 151, 179.)

> All the property and all the institutions of the United States are, constructively, without the local, territorial jurisdiction of the individual States, in every respect, and for every purpose, including that of taxation. (*McCulloch* v. *Maryland*, 4 Wheat., 316, 395.)

Indeed, the provision of law quoted on page 29 of appellant's brief is enough in itself to dispel any doubt concerning the harmony of the forestry legislation with all proper claims of State sovereignty, for nothing could be more plainly declaratory of the purpose of Congress to avoid even seeming interference with the legitimate powers of the State over persons and things within such reservations.

(c) *The State has no beneficial right whatsoever in the land; there is neither community of ownership, nor relation of trustee and cestui que trust.*

Elaboration here seems hardly necessary. The lands were ceded to the United States by Mexico by the treaty of Guadaloupe Hidalgo nearly 30 years before the State of Colorado came into being. It may be that, as this court has suggested, the territory was held with the purpose of converting it into a theater for State governments. There may have been some measure of obligation to do so; but surely no more than a moral obligation with no other obligee than the spirit of the Constitution, or the then existing States—an obligation to be performed at such times and in such manner as the judgment and discretion of Congress should determine and whose performance could never be exacted save by the congressional

conscience. Whatever its nature, suffice to say that this obligation was actually complied with long ago, so far as were concerned the lands within the State of Colorado. Hence the references to it in appellant's argument are irrelevant and the reliance futile.

But this court does not say, as might be concluded from the opposing brief, that there was ever even a moral obligation to dispose of the *title to these lands* at any particular time or in any particular way, or any moral obligation to submit them to the taxation or the regulation of the particular State wherein they lie, or to allow such State in any manner to share in their enjoyment or control; much less an obligation of a justiciable nature, the performance of which, contrary to the will of Congress, might be directly or indirectly enforced by the courts.

These lands are held by the United States in trust, to be sure. The Nation holds *all* of its property, real or personal, in that way.

> The United States do not and can not hold property, as a monarch may, for private and personal purposes. All the property and revenues of the United States must be applied and held, as all taxes, duties, imposts, and excises must be laid and collected, "to pay the debts and provide for the common defense and general welfare of the United States." (*Dobbins* v. *Commissioners*, 16 Pet., 435, 448; *Van Brocklin* v. *Tennessee*, 117 U. S., p. 158.)

But the people of the United States—not particular States nor the people of particular States—are the beneficiaries.

> The public domain is held by the Government as part of its trust. The Government is charged with the duty and clothed with the power to protect it from trespass and unlawful appropriation, and, under certain circumstances [referring to equitable claims of entrymen to receive patents under general land laws] to invest the individual citizen with the sole possession of the title which had till then been common to *all the people* as the beneficiaries of the trust. (*United States* v. *Beebe*, 127 U. S., 338, 342.)
>
> NOTE.—Through the carelessness of some printer the learned counsel for the appellant are placed in the false position of adapting and converting the above passage to their own use by changing the word "citizen" to the word "States." (Brief, p. 31.)

In *United States* v. *Trinidad Coal & Coke Company* (137 U. S., 160) the court said, speaking of coal lands within the State of Colorado (p. 170):

> They were held in trust for all the people; and, in making regulations for disposing of them, Congress took no thought of their pecuniary value, but, in the discharge of a high public duty and in the interest of the whole country, sought to develop the material resources of the United States by opening its vacant coal lands to entry by individuals and by associations of persons at prices below their actual value.

It was perfectly understood at the beginning of the Government that the lands of the original public

domain, ceded by Virginia, and four other States during the Confederacy, and by Georgia and North Carolina soon after the new Government had begun its existence, were ceded and held to effect immediate union, to forestall future controversy and dispute, to discharge the obligations and expenses of the common war, and to meet the common financial burdens of the future. The terms of the treaties, and the causes, negotiations, and proceedings out of which they eventuated, admitted of no reasonable doubt upon the subject; and yet, afterwards, when new States were created out of this territory, there were not lacking those who advanced the extraordinary, if not preposterous, claim that the States by virtue of their nascent sovereignties, and in face of solemn compacts to the contrary which conditioned their birth, had acquired the very ownership of all the public lands within their borders. The claim was fittingly answered by Mr. Justice McLean in 1839 in *United States* v. *Gratiot* (1 McLean, 454, 26 Fed. Cas., 15, 249), where, after referring to a contention that Congress could not lease a lead mine, he said:

> A doctrine somewhat similar to this was at one time advanced, with some prospect of embodying in its favor a strong public feeling. It was, indeed, not only asserted that the laws of the United States which regulated the sale of public lands within a State were void, but that the lands rightfully belonged to the State. This doctrine was well calculated to enlist in its behalf local feelings and interests; but the

> sober sense of public sentiment gave little encouragement to so novel and dangerous an error.

And in *Turner* v. *American Baptist Union* (5 McLean, 344; 24 Fed. Cas. No. 14251), decided in 1852, the court said:

> On the part of complainant it was contended that on the establishment of the State government, Michigan, by virtue of her sovereignty, had a right to all the lands within her limits. This argument is not now advanced for the first time. Several years ago it was broached in the Senate, and in some of the State legislatures, but it was received everywhere with less favor than its advocates anticipated. It proffered so rich a boon to the new States, it was expected that they would embrace it with enthusiasm and hail its advocates as the distinguished friends of State rights. The argument grew less cogent by the lapse of time, as the public lands passed into the hands of individuals, by purchase. Had it not been for this, no one can say that the policy would not have enlisted a powerful, if not successful, party in our political progress. Looking at the matter as a question of law, we have no hesitancy in saying the argument is groundless.

See also:

> *Van Brocklin* v. *Tennessee*, 117 U. S., 151, 159 et seq.
>
> For the history and terms of the original sessions, see Public Domain, pp. 59–88.
>
> Treat's National Land System (N. Y., Treat & Co., 1910).

The well-established doctrine that tide lands and the shores of navigable waters generally below high-water mark pass, without express grants, to new States upon their admission as such (*Van Brocklin* v. *Tennessee*, 117 U. S., 151, 167, 168; *Pollard* v. *Hagan et al.*, 3 How., 212, as modified by *Shively* v. *Bowlby*, 152 U. S., 1, 27, 47, and *Mann* v. *Tacoma Land Company*, 153 U. S., 273; *Barney* v. *Keokuk*, 94 U. S., 324, 338) is a special doctrine, resting upon the fact that the ownership and control of such lands was an inherited sovereign prerogative of the original States and upon the (moral?) obligation, and the strongly presumed intention, of Congress to convey to new States all lands of that character within their boundaries. It has no significance where ordinary lands are concerned. To say that the tenure by a State of all the lands, or any particular proportion or quantity of the lands, comprising its territory is essential to its full sovereignty would be, of course, absurd, and to object on the same ground to the tenure of land by the United States seems hardly less so. If the argument which the appellant makes in this connection be sound, Rhode Island may justly complain of the size of Colorado. (Br., pp. 35–38.)

The lands here in question were acquired and paid for by the money and sacrifices of the Nation. Colorado, like other States, received liberal donations of land from the Federal Government when admitted to the Union (18 Stat., 474). (She receives regularly a large percentage of the yearly revenue from the national forests within her borders, 35 Stat.,

260. See appendix.) And, like all other States carved out of the public domain, with a very few exceptions (117 U. S., p. 160 et seq.), she solemnly agreed never to tax or lay claim to any of the lands of the United States.

The enabling act (referring to the convention which was to, and subsequently did, frame the State constitution), provided:

> That said convention shall provide, by an ordinance irrevocable without the consent of the United States and the people of said State, * * * secondly, that the people inhabiting said Territory do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said Territory, and that the same shall be and remain at the sole and entire disposition of the United States, and that the lands belonging to citizens of the United States residing without the said State shall never be taxed higher than the lands belonging to residents thereof, and that no taxes shall be imposed by the State on lands or property therein belonging to, or which may hereafter be purchased by, the United States. (18 Stat., 474, sec. 4.)

An ordinance in the very words of this proviso was accordingly adopted with this addition:

> Third. That this ordinance shall be irrevocable without the consent of the United States and the people of the State of Colorado. (1 Mills Ann. Stat. Colo., p. 109.)

Adoption of this ordinance, like compliance with all other provisions of the act, conditioned the power

of the President to proclaim the State's admission. (18 Stat., 474, sec. 5.) The proclamation recited the passage of the ordinance and found that the "fundamental conditions imposed by Congress," of which that was one, had been complied with.

1 Mills Ann. Stat. Colo., p. 111;
19 Stats., 665.

The ordinance, however, was not necessary to protect the United States from all claim of State interest in the lands.

> It can not be doubted that the provisions which speak of the exemption of property of the United States from taxation, in the various acts of Congress admitting States into the Union, are equivalent to each other; and that, like the other provision, which often accompanies them, that the State "shall not interfere with the primary disposal of the soil by the United States," they are but declaratory, and confer no new right or power. (*Van Brocklin* v. *Tennessee*, 117 U. S. at p. 167.)

In *Hartman* v. *Tresise* (36 Colo., 146), wherein a statute purporting to authorize the public to fish in all streams of the State, subject to actions of trespass for damage done to riparian property, was declared void, the court said (p. 150):

> If the state, when formed, might have exercised authority in disposing of the public domain therein situate, it was relinquished, for, in our enabling act, 1 Mills' Ann. Stats., pp. 90, 91, 109, it was specifically provided, as one of the conditions precedent to the right

> of the people of our territory to form a state, that they should, and complying therewith they did, by irrevocable ordinance, disclaim all right and title to public lands within the territory, and expressly recognized the exclusive right of congress to dispose of the same. That congress has such exclusive right has been expressly decided. (*Wilcox* v. *Jackson*, 13 Peters, *517.)

(2) The case comes down to this: Congress undertook to save certain land owned by the United States from unlicensed intrusions by live stock. It did this for two reasons, viz, (*a*) to protect the timber, and (*b*) to avoid such interferences with the rights of licensed users as would tend to destroy all attempts to regulate this use. In addition let it be conceded that there was a third, though secondary and incidental, motive, namely, to secure some reasonable pecuniary return for the grazing privilege, to help meet the expense of forest administration. Accordingly it forbade all persons to allow their animals to go or remain upon this land.

Now, waiving for the present the query whether the appellant is right in saying that this reservation was not an instrumentality of the Government, the case presents this single query: Under the Constitution is the United States, in protecting and in controlling the occupation and use of the public lands, subject to be governed by State regulations, as an individual property owner would be?

(*a*) Such control can not be exerted by denial of remedies, upon the hypothesis that the Government

is in any sense dependent upon State laws for the enforcement of its rights. The United States, to be sure, enjoys all the rights and remedies under the laws of the State that an individual would have. (*United States* v. *Gear*, 3 How., 120; *Cotton* v. *United States*, 11 How., 228, 231; *Camfield* v. *United States*, 167 U. S., 518.)

But when these fail it may provide its own remedies and enforce them in its own courts. Once concede the *right* of exclusive control and the power of enforcing it judicially is found in the Federal courts without any reference whatever to State laws regarding remedies. To deny this entails the absurdity of supposing that the Nation, whose rights, whatever they are and wherever they exist, are supreme, may have a right which it can not enjoy because the State fails or refuses to provide a remedy for its enforcement.

> Every government intrusted, by the very terms of its being, with powers and duties to be exercised and discharged for the general welfare, has a right to apply to its own courts for any proper assistance in the exercise of the one and the discharge of the other, and it is no sufficient answer to its appeal to one of those courts that it has no pecuniary interest in the matter. The obligations which it is under to promote the interest of all, and to prevent the wrongdoing of one resulting in injury to the general welfare, is often of itself sufficient to give it a standing in court. (*In re Debs*, 158 U. S., 564, 584.)

> The United States can declare by Congress what the law shall be with respect to the public lands, and enforce that law through the judiciary department. (*Irvine* v. *Marshall*, 20 How., 558.)
>
> Mr. Justice Story has well said: "It scarcely seems possible to raise a reasonable doubt as to the propriety of giving any national court jurisdiction of cases in which the United States are a party. It would be a perfect novelty in the history of national jurisprudence, as well as of public law, that a sovereign had no authority to sue in his own courts. Unless this power were given to the United States, the enforcement of all their rights, powers, contracts, and privileges in their sovereign capacity would be at the mercy of the States. They must be enforced if at all in the State tribunals." (Story, Const., sec. 1674; *United States* v. *Texas*, 143 U. S. 621, 641.)

(*b*) Viewed as imposing a rule of conduct upon persons for the regulation of their respective rights, the law, with equal certainty, could not affect the Government. The State may not say to the Government that it shall not enjoy a right of property because it has not been diligent in adopting precautions prescribed by the State, nor absolve any individual from his duty to obey the Federal laws. The relations of the Government to individuals are governed by the National Constitution and the will of Congress, express or implied.

> The Government of the Union, then, * * * is, emphatically, and truly, a Government of

> the people. In form and in substance it emanates from them. Its powers are granted by them and are to be exercised directly on them, and for their benefit. (*McCulloch* v. *Maryland*, 4 Wheat., 316, 404.)

If an act of Congress declaring the duties of private persons in respect of Federal property be invalid, it must be because that act offends the Constitution, and it can not be declared unconstitutional because in conflict with a law of the State upon the hypothesis that a "police power" exists in the latter directly or indirectly to control the conduct of the Government or regulate its relations with individuals. The contrary argument in the opposing brief appears to be founded upon a misconception of the police power, assuming as it does that that power may rise superior to powers conferred upon the General Government by the Constitution.

(*c*) Whatever the real nature and the limits of the appellant's theory may be, it is clear that its adoption here can only mean that, in the use and control of its lands, in which the State, concededly, has no property interest whatever, the United States is subject to a very serious degree to be dominated by the changing, and it may well be capricious, policies of the State legislature. For instance, this particular law, the result of which, according to appellant, is to strip Congress of the power to prohibit the intrusions of live stock upon public land, might at any time be altered by the legislature in such terms as to confer upon the United States, in common with

private owners, the right of exclusive possession in the full sense. In that event Congress, desirous of enforcing the right, would be constitutionally justified in prohibiting such intrusions by holding the stock owner both civilly and criminally liable should they occur. Such an act, however, would stand not upon the firm foundation of the Constitution, but upon the quicksand of State permission; for the legislature might again change its policy and reenact the present law, thus nullifying the will of Congress and subtracting important provisions from its civil and criminal codes.

This theory of appellant is at war with the very nature of our Government. Ownership by private persons is subject, within constitutional limits, to the laws of the State where the property is situate. But national ownership could not be ruled by those laws without ignoring the cardinal principle that national supremacy is the inseparable attendant of every national subject. Since the lands are the property of the United States, the power to protect them and control their use must be admitted to be in the United States, simply because it could not be elsewhere and because the total absence of such a power would be contradictory of the very idea of ownership.

But the Constitution confers the power expressly. Article IV, Section III, clause 2, provides:

> The Congress shall have power to dispose of and make all needful rules and regulations respecting ~~concerning~~ the territory or other property of the United States.

This applies to all property of the United States, whether real or personal.

> The power is not confined to the territory of the United States, but extends to "other property belonging to the United States"; so that it may be applied to the due regulation of all other personal and real property rightfully belonging to the United States. And so it has been constantly understood and acted upon. (*2 Story on Constitution*, par. 1325–end.)
>
> The term "territory" as here used is merely descriptive of one kind of property, and is equivalent to the word "lands." And Congress has the same power over it as over any other property belonging to the United States, and this power is vested in Congress without limitation. (*United States* v. *Gratiot*, 14 Pet., 526, 537, affirming Fed. Cas. No. 15249; 1 McLean, 454.)

This court has declared repeatedly that the power of Congress under this clause, being given without limitation, is absolute and exclusive of all State interference, and many other courts, both State and Federal, have reiterated the principle.

> *Wilcox* v. *Jackson*, 13 Pet. (1839), 498, 517.
> *United States* v. *Gratiot*, 14 Pet. (1840), 526.
> *Jourdan* v. *Barrett*, 4 How. (1846), 168, 184.
> *Irvine* v. *Marshall*, 20 How. (1857), 558.
> *Gibson* v. *Chouteau*, 13 Wall., 92, 99.
> *McCarthy* v. *Mann*, 19 Wall., 20.
> *Van Brocklin* v. *Tennessee*, 117 U. S., 151, 167.

United States v. *Insley*, 130 U. S., 263.
Redfield v. *Parks*, 132 U. S., 239.
Camfield v. *United States*, 167 U. S., 518, 525.
Shively v. *Bowlby*, 152 U. S., 1, 50, 52.
Mann v. *Tacoma Land Co.*, 153 U. S., 273, 283.
United States v. *Rio Grande Dam & Irrigation Co.*, 174 U. S., 690, 703.
Gutierres v. *Land & Irrigation Co.*, 188 U. S., 545, 555.
Kansas v. *Colorado*, 206 U. S., 46, 89.

Wilcox v. *Jackson* (13 Pet., 498) was a suit in ejectment in a State court of Illinois to recover possession of certain premises, constituting part of a military post, from the military commander, the plaintiff claiming under a preemption entry. This court held that the lands were reserved by law from acquisition under the preemption law, and that consequently the entry was void. Plaintiff nevertheless claimed a right of recovery by virtue of a law of the State which declared that a register's certificate should be deemed evidence of title sufficient to recover possession of the lands described therein in any action of ejectment. This court, in overruling the contention and reversing the judgment of the supreme court of the State upholding it, said (p. 516):

> It has been said that the State of Illinois has a right to declare, by law, that a title derived from the United States, which, by their laws, is only inchoate and imperfect, shall be deemed as perfect a title as if a patent had issued from the United States; and

the construction of her own courts seems to give that effect to her statute. That State has an undoubted right to legislate as she may please, in regard to the remedies to be prosecuted in her courts, and to regulate the disposition of the property of her citizens, by descent, devise, or alienation. But the property in question was a part of the public domain of the United States. Congress is invested by the Constitution with the power of disposing of, and making needful rules and regulations respecting it. Congress has declared, as we have said, by its legislation, that in such a case as this a patent is necessary to complete the title. But in this case no patent has issued; and therefore by the laws of the United States the legal title has not passed, but remains in the United States. Now, if it were competent for a State legislature to say that, notwithstanding this, the title shall be deemed to have passed; the effect of this would be, not that Congress had the power of disposing of the public land, and prescribing the rules and regulations concerning that disposition, but that Illinois possessed it. That would be to make the laws of Illinois paramount to those of Congress, in relation to a subject confided by the Constitution to Congress only. And the practical result in this very case would be, by force of State legislation, to take from the United States their own land, against their own will, and against their own laws. We hold the true principle to be this, that whenever the question in any court, State or Federal, is,

> whether a title to land which had once been the property of the United States had passed, that question must be resolved by the laws of the United States; but that whenever, according to those laws, the title shall have passed, then that property, like all other property in the State, is subject to the State legislation; so far as that legislation is consistent with the admission that the title passed and vested according to the laws of the United States.

In *United States* v. *Gratiot* (14 Pet., 526) there was an action upon a bond given for the faithful performance of a contract entered into under authority of the President and amounting in law to a lease of certain lead mines on public lands. The lease was made pursuant to an act of Congress of March 3, 1807, which, among other things, declared:

> That the several lead mines in the Indiana Territory, together with as many sections contiguous to each as shall be deemed necessary by the President of the United States, shall be reserved for the future disposal of the United States—

And that the President was authorized to lease any lead mines in said Territory for a term not exceeding five years. The court upheld this legislation, saying (p. 536):

> That the mines now in question lie within the territory referred to in the act of Congress and are the property of the United States is not denied. And the Constitution of the United

States (Art. IV, sec. 3) provides, "that Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." The term territory, as here used, is merely descriptive of one kind of property; and is equivalent to the word lands. And Congress has the same power over it as over any other property belonging to the United States; and this power is vested in Congress without limitation and has been considered the foundation upon which the Territorial governments rest. In the case of *McCulloch* v. *State of Maryland* (4 Wheat., 422) the Chief Justice, in giving the opinion of the court, speaking of this article, and the powers of Congress growing out of it, applies it to Territorial governments; and says, all admit their constitutionality. And again, in the case of the *American Insurance Company* v. *Canter* (1 Pet., 542), in speaking of the cession of Florida, under the treaty with Spain, he says that Florida, until she shall become a State, continues to be a Territory of the United States Government, by that clause in the Constitution which empowers Congress to make all needful rules and regulations respecting the territory or other property of the United States. If such are the powers of Congress over the lands belonging to the United States, the words "dispose of" can not receive the construction contended for at the bar; that they vest in Congress the power only to sell and not to lease such lands. The disposal must be left to the discretion of Congress. And

> there can be no apprehension of any encroachments upon State rights by the creation of a numerous tenantry within their borders, as has been so strenuously urged in the argument.

In *Jourdan* v. *Barrett* (4 How., 168) it was ruled that persons who entered upon lands of the United States without its consent were trespassers and could not successfully defend as against its grantees by invoking the State laws of prescription and limitation. The court said (p. 184):

> By the Constitution, Congress is given "power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States;" for the disposal of the public lands, therefore, in the new States, where such lands lie, Congress may provide by law; and having the constitutional power to pass the law, it is supreme; so Congress may prohibit and punish trespassers on the public lands. Having the power of disposal and of protection, Congress alone can deal with the title, and no State law, whether of limitation or otherwise, can defeat such title.

In *Irvine* v. *Marshall* (20 How., 558) it was held that one who, at a sale of public lands in a Territory, purchased in his own name as agent for another, must account as trustee to his employer, although the statutes of the Territory (Minnesota) had abolished all resulting trusts. The court said (p. 561):

> It can not be denied that all the lands in the Territories, not appropriated by compe-

> tent authority before they were acquired, are in the first instance the exclusive property of the United States, to be disposed of to such persons, at such times, and in such modes and by such titles, as the Government may deem most advantageous to the public fisc, or in other respects most politic. This right has been uniformly reserved by solemn compacts upon the admission of new States, and has heretofore been recognized and scrupulously respected by sovereign States within which large portions of the public lands have been comprised, and within which much of those lands is still remaining.

Again (p. 563):

> It is asked under what head of jurisdiction, in the absence of express and contrary provision, the courts of the United States can recognize or enforce a resulting trust like that in the present case. The fallacy of the conclusion attempted from the first of the positions just stated consists in the supposition that the control of the United States over property admitted to be their own is dependent upon locality, as to the point within the limits of a State or Territory within which that property may be situated. But as the control, enjoyment, or disposal of that property must be exclusively in the United States, anywhere and everywhere within their own limits and within the powers delegated by the Constitution, no State, and much less can a Territory (yet remaining under the authority of the Federal Government), interfere with the

regular, the just, and necessary powers of the latter. Another error, inherent in the same position, is seen in the supposition that the contracts of the Government with respect to subjects within its constitutional competency are also local, confined in their effect and operation strictly to the *situs* of the subjects to which they relate. The true principle applicable to the objection just noted, and by which that objection is at once obviated, we hold to be this: That within the provisions prescribed by the Constitution and by the laws enacted in accordance with the Constitution, the acts and powers of the Government are to be interpreted and applied so as to create and maintain a *system*, general, equal, and beneficial as a whole. By this rule the acts and the contracts of the Government must be understood as referring to and sustaining the rights and interests of all the members of this confederacy, and as neither emanating from, nor intended for the promotion of, any policy peculiarly local, nor in any respect dependent upon such policy. The system adopted for the disposition of the public lands embraces the interests of all the States, and proposes the equal participation therein of all the people of all the States. This system is therefore peculiarly and exclusively the exercise of a Federal power. The theater of its accomplishment is the seat of the Federal Government. The mode of that accomplishment, the evidences or muniments of right it bestows, are all the work of Federal functionaries alone. Are these things in any degree compatible with the

> claim to prescribe to the United States the modes or the extent in which they may dispose of their own property, or with a denunciation of a forfeiture as the consequence of a departure from such a pretension?

In *Gibson* v. *Chouteau* (13 Wall., 92) it was held that occupation of lands derived from the United States, before the issue of its patent, for the period prescribed by the State statutes of limitation for commencement of actions to recover real property, could not operate to bar an action of ejectment founded upon the legal title subsequently conveyed by the Government. This court, speaking through Mr. Justice Field, laid down the law as follows (p. 99):

> With respect to the public domain, the Constitution vests in Congress the power of disposition and of making all needful rules and regulations. That power is subject to no limitations. Congress has the absolute right to prescribe the times, the conditions, and the mode of transferring this property, or any part of it, and to designate the persons to whom the transfer shall be made. No State legislation can interfere with this right or embarrass its exercise; and to prevent the possibility of any attempted interference with it, a provision has been usually inserted in the compacts by which new States have been admitted into the Union, that such interference with the primary disposal of the soil of the United States shall never be made. Such provision was inserted in the act admitting Missouri, and it is embodied in the present Constitution, with the

> further clause that the legislature shall also not interfere "with any regulation that Congress may find necessary for securing the title in such soil to the *bona fide* purchasers."
>
> The same principle which forbids any State legislation interfering with the power of Congress to dispose of the public property of the United States also forbids any legislation depriving the grantees of the United States of the possession and enjoyment of the property granted by reason of any delay in the transfer of the title after the initiation of proceedings for its acquisition.

In *Van Brocklin* v. *State of Tennessee* (117 U. S., 151) it was decided that land within the State which, pursuant to acts of Congress for laying and collecting direct taxes, was sold, struck off, and purchased by the United States for the amount of the tax thereon, and was afterwards sold by the United States for a larger sum, or redeemed by the former owner, was to be considered as entirely exempt from State taxation during the period of Federal ownership, and for nonpayment of taxes assessed by the State during that time, could not be sold afterwards.

The court said at page 167 of the very learned and exhaustive opinion:

> Upon the admission of a State into the Union, the State doubtless acquires general jurisdiction, civil and criminal, for the preservation of public order, and the protection of persons and property, throughout its limits, except where it has ceded exclusive jurisdic-

tion to the United States. The rights of local sovereignty, including the title in lands held in trust for municipal uses, and in the shores of navigable waters below high-water mark, vest in the State and not in the United States. (*New Orleans* v. *United States*, 10 How., 662, 737; *Pollard* v. *Hagan*, 3 How., 212; *Goodtitle* v. *Kibbe*, 9 How., 471; *Doe* v. *Beebe*, 13 How., 25; *Barney* v. *Keokuk*, 94 U. S., 324.) But public and unoccupied lands to which the United States have acquired title, either by deeds of cession from other States or by treaty with a foreign country, Congress, under the power conferred upon it by the Constitution, "to dispose of and make all needful rules and regulations respecting the territory or other property of the United States," has the exclusive right to control and dispose of, as it has with regard to other property of the United States; and no State can interfere with this right, or embarrass its exercise. (*United States* v. *Gratiot*, 14 Pet., 526; *Pollard* v. *Hagan*, 3 How., 212; *Irvine* v. *Marshall*, 20 How., 558, 563; *Gibson* v. *Chouteau*, above cited.)

In *Camfield* v. *United States* (167 U. S., 518) the court upheld the constitutionality of the act of February 25, 1885 (23 Stat., 321), which forbids inclosures of the public domain and provides for their summary abatement and for the criminal punishment of those who erect or maintain them. The lands in question were entirely within the State of Colorado. The court observed that the Government with respect to its own lands had the rights

(meaning *all* the rights) of an ordinary proprietor to maintain its possession and prosecute trespasses; might deal with such lands precisely as a private individual might deal with his farming property; might sell or withhold them from sale, or grant them in aid of railways or other public enterprises, etc., but would be "recreant to its duties as trustee for the people of the United States" if it permitted their monopolization for private gain. It viewed (p. 524) the act as intended to reach an evil which the ordinary rights of proprietors under the State laws could not reach, namely, inclosures resulting from fences erected wholly upon lands in private ownership, and in this connection it said (p. 525):

> The General Government doubtless has a power over its own property analogous to the police power of the several States, and the extent to which it may go in the exercise of such power is measured by the exigencies of the particular case. If it be found to be necessary for the protection of the public, or of intending settlers, to forbid all inclosures of public lands, the Government may do so, though the alternate sections of private lands are thereby rendered less available for pasturage. The inconvenience, or even damage, to the individual proprietor does not authorize an act which is in its nature a purpresture of Government lands. While we do not undertake to say that Congress has the unlimited power to legislate against nuisances within a State which it would have within a Territory, we do not think the admission

> of a Territory as a State deprives it of the power of legislating for the protection of the public lands, though it may thereby involve the exercise of what is ordinarily known as the police power, so long as such power is directed solely to its own protection. A different rule would place the public domain of the United States completely at the mercy of State legislation.

In *United States* v. *Cleveland & Colorado Cattle Company* (33 Fed., 323), which involved the right of the Government to invoke the injunctive power of the Circuit Court for the abatement of an unlawful inclosure independently of the statute construed in the *Camfield* case, Judge Brewer, upholding the power, observed (p. 330):

> Must the Government, finding parties in possession of the public domain, even though under a claim and color of title, proceed to an action at law to establish its title before restraining such parties from improper use of such land? The Government has not simply the rights of a property owner in respect to its lands; it has all the powers of sovereignty.

In *United States* v. *Rio Grande Dam & Irrigation Company* (174 U. S., 690) the court said (p. 703):

> Although this power of changing the common-law rule as to streams within its dominion undoubtedly belongs to each State, yet two limitations must be recognized: First, that in the absence of specific authority from Congress a State can not by its legislation de-

stroy the right of the United States, as the owner of lands bordering on a stream, to the continued flow of its waters, so far at least as may be necessary for the beneficial uses of the Government property. Second, that it is limited by the superior power of the General Government to secure the uninterrupted navigability of all navigable streams within the limits of the United States.

And in *Gutierres* v. *Albuquerque Land Company* (188 U. S., 545) the court said (p. 554):

> Of course, as held by the *Rio Grande* case (p. 703), even a State, as respects streams within its borders in the absence of specific authority from Congress, "can not by its legislation destroy the right of the United States, as the owner of lands bordering on a stream, to the continued flow of its waters, so far at least as may be necessary for the beneficial uses of the Government property."

In *Kansas* v. *Colorado* (206 U. S., 46, 86) the above excerpt from the *Rio Grande* case was again quoted with approval, and the court said, referring to the constitutional provision which we are now discussing (p. 89):

> The full scope of this paragraph has never been definitely settled. Primarily, at least, it is a grant of power to the United States of *control over its property*. This is implied by the words "territory or other property." It is true it has been referred to in some decisions as granting political and legislative control over the Territories as distinguished from

> the States of the Union. It is unnecessary in the present case to consider whether the language justifies this construction. Certainly we have no disposition to limit or qualify the expressions which have heretofore fallen from this court in respect thereto. But clearly it does not grant to Congress any legislative control over the States, and must, so far as they are concerned, be limited to *authority over the property* belonging to the United States within their limits.

The case of *Shannon* v. *United States* (160 Fed., 870) is of especial interest because of its similarity with the case at bar. The Circuit Court of Appeals for the Ninth Circuit upheld a decree perpetually enjoining Shannon from permitting any of his stock to go or remain within a forest reservation in Montana, notwithstanding his reliance upon the State fence law. All of the contentions made by appellant in this case, and others which he does not make, such as the reasonableness of the Secretary's regulations and their authorization by Congress, are expressly met and disposed of. After reviewing a number of the authorities cited above, the court said (p. 875):

> In the light of these decisions, it is clear that the State of Montana had no dominion over the public lands lying within its borders, and no power to enact legislation directly or indirectly affecting the same. It could not give to the people of that State the right to pasture cattle upon the public domain, or in any way to use the same. Its own laws in regard to fencing and pasturing cattle at large must be

held to apply only to land subject to its own dominion. No one within the State can claim any right in the public land by virtue of such a statute. The United States have the unlimited right to control the occupation of the public lands, and no obligation to fence those lands, or to join with others in fencing them for the purpose of protecting its rights can be imposed on it by a State. The rights given by the State statutes to the subjects of the State extend only to the lands of the State. They end at the borders of the Government lands. At that border the laws of the United States intervene, and it is within their province to forbid trespass. Such laws being within the power of Congress, it is not necessary to discuss the question whether it is sovereign power or police power, or what may be its nature, for there is no power vested in the State which can embarrass or interfere with its exercise.

Numerous decisions of other courts are to the same effect. Some of them are:

United States v. *Gratiot*, 1 McLean, 454; 26 Fed. Cas., 15, 249.

Turner v. *Am. Baptist Union* (1852), 5 McLean, 344; 24 Fed. Cas., 14, 251.

Seymour v. *Sanders*, 3 Dillon, 437; 21 Fed. Cas., 12, 690.

Union Mill & M. Co. v. *Ferris*, 2 Sawyer 176.

United States v. *Cleveland, &c., Cattle Co.* 33 Fed., 323, 330.

Carroll v. *Price*, 81 Fed., 137.

Heckman v. *Sutter*, 119 Fed., 83; 128 id., 393.

Shannon v. *U. S.* (C. C. A.), 160 Fed., 870.
People v. *Folsom*, 5 Cal., 373, 378.
Doran v. *Central Pacific* (1864), 24 Cal., 246, 257.
Miller v. *Little*, 47 Cal., 348, 350.
Vansickle v. *Haines*, 7 Nev., 249, 262.
Fee v. *Brown*, 17 Colo., 510, 519 (affirmed in 162 U. S., 602).
Waters v. *Bush*, 42 Iowa, 255.
David v. *Rackabaugh*, 32 id., 540.
Sorrels v. *Self*, 43 Ark., 451, 452.

(3) The argument that the power to "dispose of" public lands is no more than a power to grant them away, and does not contemplate the retention of the title and the reservation of the lands for national uses, besides being an argument which the appellant has no standing to make, is clearly opposed by the broad principle of construction which obtains as to all powers granted without limitation, and which this court has applied in the decisions above quoted. The real object of the clause was to make plain beyond a doubt that in respect of all the Federal property Congress, to quote the words of the Supreme Court of Colorado (*Fee* v. *Brown*, 17 Colo., 510, 519), "is omnipotent." "The disposal must be left to the discretion of Congress" (*Wilcox* v. *Jackson*, *supra*).

The following observations are, however, pertinent:

(*a*) The argument overlooks the primary meaning of the words "dispose of":

> To dispose of: (*a*) To determine the fate of; to exercise the power of control over;

> to fix the condition, application, employment, etc., of; to direct or assign to a use. (*b*) To exercise finally one's power to control over; to pass over into the control of some one else, as by selling; to alienate; to part with; to relinquish; to get rid of, as to *dispose of* a house; to *dispose of* one's time. (Webster's International Dictionary.)

(*b*) The property which Congress may "dispose of" comprises every species of property which the United States may own. If the power of disposition be confined to the single one of alienation as regards the public lands, it must be similarly restricted as to all other property, personal as well as real.

(*c*) The clause gives in general terms the power to make *all* needful rules and regulations respecting ~~concerning~~ the property of the United States. If this be taken generally, it certainly authorizes a regulation of the use of any property which the Government has, and thus supplies, for the purposes of this case at least, all that would be lost by an acceptance of the narrow interpretation of the words "dispose of."

(*d*) If the provision for rules and regulations were also construed as relating only to the subject of alienation, the entire clause would be robbed of its chief significance in the Constitution. No reason presents itself why the Constitution should take pains to declare the power of alienation—which certainly would be presumed from the power to acquire and hold—and leave entirely to implication the much more important powers of protection, enjoyment and use.

(4) The "disposition" and the "regulations" in this case, so far as they concern the appellant, stand well within the power of Congress, as already declared by this court in specific instances.

(*a*) The power to lease mines was upheld in *United States* v. *Gratiot* (14 Pet., 526). Then why not the power to lease lands, or license their use, for pasturage? Timber may be "disposed of" to individuals without the land. (20 Stat., 88; 26 Stat., 1093; *Northern Pacific* v. *Lewis*, 162 U. S., 366; *United States* v. *United Verde Copper Co.*, 196 U. S., 207.) And why may not Congress adopt a general plan, such as is found in the forest reserve legislation, which looks to the protection as well as to the conservative disposition of timber as the main thing and pasturage incidentally?

(*b*) Again, the regulations of which appellant complains were for the protection of the trees as well as of the use. The bill alleges (rec., 2) and the answer admits (rec., 12) a finding by the Secretary of Agriculture that excessive grazing is detrimental "to the proper protection and perpetuation of the forests." Appellant is in no position to dispute the conclusive force of this finding. (*Bates* v. *Payne*, 194 U. S., 106.) As a purely protective measure Congress was authorized not only to prohibit, as it did, such injurious intrusions, but also to visit criminal punishment upon all persons responsible for them. (Act of February 25, 1885; *Camfield* v. *United States*, 167 U. S., at p. 525; R. S., sec. 2461; 20 Stat., 90, sec. 4; *United*

States v. *Briggs*, 9 How., 351; *Shiver* v. *United States*, 159 U. S., 491.)

> The Government has not simply the right of a property owner in respect to these lands. It has all the powers of sovereignty. (Mr. Justice Brewer in *United States* v. *Cleveland, etc., Cattle Co., 33 Fed., 33.*)

(5) It remains to refer briefly to certain decisions much relied on in the opposing brief.

Pollard's Lessee v. *Hagan et al.*, decided in 1845 (3 How., 212), was ejectment concerning land in Alabama on the Mobile River, a tidal stream. Plaintiffs claimed under a patent of the United States issued pursuant to the act of July 2, 1836 (6 Stat., 680; the opinion, p. 219, cites the act as of July 6), which undertook to confirm to the heirs of Pollard a certain lot by description, and directed the issuance of a patent in the usual form, but contained a proviso that the act should operate merely as a relinquishment upon the part of the United States of whatever claim or right it might have in the premises, and without prejudice to the claims of third persons. Plaintiffs also cited, and claimed under, the act of May 26, 1824 (4 Stat., 66), granting certain lots to the city of Mobile and to certain individuals claiming them under acts of Spain. (Pollard's title is fully explained in *Pollard* v. *Kibbe*, 14 Pet., 353.) The defendants, besides asserting a claim of their own, maintained that, as the land lay below high-water mark, no grant of the title could be given by the United States *after* the admission of Alabama as a State (1819). It was upon this propo-

sition, adopted in the charge to the jury, that the decision turned. The majority opinion, written by Mr. Justice McKinley, contains a number of general statements which have since been relied on, as they are here, by those who would deny the right of the Government to control the public lands. As the case has been limited and in part at least disapproved by the court itself on a number of occasions, it may not be improper to suggest that these general statements are *dicta* which, so far as they affect the case at bar, have been found unacceptable in later decisions.

Thus the statement (p. 223) that the United States has no power of eminent domain was silently denied in *Kohl* v. *United States* (91 U. S., 367), where the contrary was decided. And in *Shively* v. *Bowlby* (152 U. S., 1, 26–28) the court was at special pains to point out that the decision really "involved only a grant made by Congress after the admission of Alabama" (p. 28), and to say that so much of the reasoning of Mr. Justice McKinley "as implied that the title to the land below high-water mark could not have been granted away by the United States after the deed of cession of the territory (by Georgia) and before the admission of the State into the Union, was not necessary to the decision." (Ibid.)

Withers v. *Buckley*, decided 1857 (20 How., 84), involved a question whether a law of Mississippi authorizing a canal to divert waters of a navigable tributary of the Mississippi was in conflict with a provision in the enabling act providing that the Mississippi River and its navigable tributaries should

be common highways and forever free to all citizens of the United States. As a matter of fact, the State law and this Federal provision were found to be in harmony.

Appellant also cites *People* v. *Shearer* (30 Cal., 645), as to which it is enough to quote from an opinion by this court:

> The Supreme Court of the State of California appears at one period to have assumed that the exemption of the lands of the United States from taxation depended upon the terms of the act of Congress admitting the State into the Union, or upon the statutes of the State. (*People* v. *Morrison*, 22 Cal., 73; *People* v. *Shearer*, 30 Cal., 645.) But in later cases it has taken broader ground, and has defined the meaning of "taxation" as "a charge levied by the sovereign power upon the property of its subject. It is not a charge upon its own property, nor upon property over which it has no dominion. This excludes the property of the State, whether lands, revenues, or other property, and the property of the United States." (*People* v. *McCreery*, 34 Cal., 342, 456; *People* v. *Austin*, 47 Cal., 353, 361; *Van Brocklin* v. *Tennessee*, 117 U. S., 165.)

In *United States* v. *Bridge Company* (6 McLean, 517) it was held that lands of the United States might be appropriated for roads and bridges under the eminent domain of a State, and in *United States* v. *Chicago* (7 How., 185) there were *dicta* to the same effect. Since, as is now clear, a State can not sue

the United States without its consent (*Kansas* v. *United States*, 204 U. S., 331), such a power of eminent domain if it existed would amount to a power to take arbitrarily without process of law.

In *Van Brocklin* v. *Tennessee* (117 U. S., 161) this court said, speaking first of the bridge company's case:

> The question in issue in that case was not of the State's right of taxation, but of its right of eminent domain for the construction of roads and bridges. The decision of the learned justice in favor of the validity of the exercise of that right by a State over lands of the United States, without the consent of the United States, manifested either by an express act of Congress or by the assent of a department or officer vested by law with the power of disposing of lands of the United States, appears to have been based upon the theory that the United States can hold land as a private proprietor for other than public objects, and upon a presumption of the acquiescence of Congress in the State's exercise of the power as tending to increase the value of the lands; and it finds some support in *dicta* of Mr. Justice Woodbury, in a case in which, however, the exercise of the power by the State was adjudged to be unlawful. (*United States* v. *Chicago*, 7 How., 185, 195.) But it can hardly be reconciled with the views expressed by Congress, in acts concerning particular railroads too numerous to be cited, as well as in general legislation.

(Acts of Aug. 4, 1852, ch. 80, and Mar. 3, 1855, ch. 200, 10 Stats., 28, 683; July 26, 1866, ch. 292, sec. 8, 14 Stat., 253; Rev. Stat., sec. 2477.) When that question shall be brought into judgment here, it will require and will receive the careful consideration of the court.

As for those decisions in which the United States was referred to as an "ordinary proprietor," or as having only the rights of an "ordinary proprietor," respecting the public lands, it is enough to say, as examination of the opinions will amply demonstrate, that the expression was used as one of convenience in distinguishing the case where the national power depends on national ownership from the case where exclusive Federal jurisdiction exists over land as a *locus*.

Finally, the decision whereby the Nation is subjected in its rights or remedies to the control of State laws has yet to be made by this court. There are insuperable difficulties in the way of the appellant's hypothesis. What would be the limits to which the State might go? Would the Nation become a mere "person," compelled to flee to the cover of the fourteenth amendment to protect itself from a denial or confiscation of property rights? If not, upon what theory could it demand any protection at all except the one and obvious theory that it is a sovereign nation, supreme in its sphere; that the powers to acquire, hold, protect, and control property, among its necessary attributes, spring out of

and rest upon not the laws of another sovereignty, but the laws of its own being?

The case does not call for a listing of all the things which Congress may and all that it may not authorize on land owned by the United States. We are not required to argue in defense of extravagant conjectures concerning activities which the Government might attempt to promote, merely by virtue of land ownership.

> Hypothetical cases of great evils may be suggested by a particularly fruitful imagination in regard to almost every law upon which depend the rights of the individual or of the government, and if the existence of laws is to depend upon their capacity to withstand such criticism, the whole fabric of the law must fail. (*United States* v. *Lee*, 106 U. S., 196, 217.)

The conservation and uses contemplated by the forest policy are natural, reasonable, and beneficent to the people of the entire country. Lands so held and administered are among the inviolable "instrumentalities" of the Government. (*Van Brocklin* v. *Tennessee*, 117 U. S., 177.)

It is respectfully submitted that the appeal should be dismissed or the decree affirmed.

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APPENDIX.

Statutory provisions concerning national forests:

That the President of the United States may, from time to time, set apart and reserve, in any State or Territory having public land bearing forests, in any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations, and the President shall, by public proclamation, declare the establishment of such reservations and the limits thereof. (Act of Mar. 3, 1891; 26 Stat., 1103, sec. 24.)

All public lands heretofore designated and reserved by the President of the United States under the provisions of the act approved March third, eighteen hundred and ninety-one, the orders for which shall be and remain in full force and effect, unsuspended and unrevoked, and all public lands that may hereafter be set aside and reserved as public forest reserves under said act, shall be as far as practicable controlled and administered in accordance with the following provisions:

No public forest reservation shall be established, except to improve and protect the forest within the reservation, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States; but it is not the purpose or intent of these provisions, or of the act providing for such reservations, to authorize the inclusion therein of lands more valuable for the mineral therein, or for agricultural purposes, than for forest purposes.

The Secretary of the Interior shall make provisions for the protection against destruction by fire and depredations upon the public forests and forest reser-

vations which may have been set aside or which may be hereafter set aside under the said act of March third, eighteen hundred and ninety-one, and which may be continued; and he may make such rules and regulations and establish such service as will insure the objects of such reservations, namely, to regulate their occupancy and use and to preserve the forests thereon from destruction, and any violation of the provisions of this act or such rules and regulations shall be punished as is provided for in the act of June fourth, eighteen hundred and eighty-eight, amending section fifty-three hundred and eighty-eight of the Revised Statutes of the United States.

* * * * *

The Secretary of the Interior may permit, under regulations to be prescribed by him, the use of timber and stone found upon such reservations, free of charge, by bona fide settlers, miners, residents, and prospectors for minerals, for firewood, fencing, buildings, mining, prospecting, and other domestic purposes as may be needed by such persons for such purposes, such timber to be used within the State or Territory, respectively, where such reservations may be located.

Nothing herein shall be construed as prohibiting the egress or ingress of actual settlers residing within the boundaries of such reservations or from crossing the same to and from their property or homes; and such wagon roads and other improvements may be constructed thereon as may be necessary to reach their homes and to utilize their property, under such rules and regulations as may be prescribed by the Secretary of the Interior. Nor shall anything herein prohibit any person from entering such forest reservations for all proper and lawful purposes, including that of prospecting, locating, and developing the mineral resources thereof: *Provided*, That such persons comply with the rules and regulations covering such forest reservations.

* * * * *

The jurisdiction, both civil and criminal, over persons within such reservations shall not be affected or changed by reason of the existence of such reservations, except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the State wherein any such reservation is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the State. (Act of June 4, 1897; 30 Stat., 11, 34, 35, 36.)

The Secretary of the Department of Agriculture shall, from and after the passage of this act, execute or cause to be executed all laws affecting public lands heretofore or hereafter reserved under the provisions of section twenty-four of the act entitled "An act to repeal the timber-culture laws, and for other purposes," approved March third, eighteen hundred and ninety-one, and acts supplemental to and amendatory thereof, after such lands have been so reserved, excepting such laws as affect the surveying, prospecting, locating, appropriating, entering, relinquishing, reconveying, certifying, or patenting of any such lands. (Act of Feb. 1, 1905; 33 Stat., 628.)

All money received after July first, nineteen hundred and seven, by or on account of the Forest Service for timber, *or from any other source of forest reservation revenue*, shall be covered into the Treasury of the United States as a miscellaneous receipt, and there is hereby appropriated and made available as the Secretary of Agriculture may direct, out of any funds in the Treasury not otherwise appropriated, so much as may be necessary to make refunds to depositors of money heretofore or hereafter deposited by them to secure the purchase price on the sale of any products or *for the use of any land or resources* of the national forests in excess of amounts found actually due from them to the United States. (Act of Mar. 4, 1907; 34 Stat., 1256.)

That hereafter twenty-five per centum of all money received from each forest reserve during any fiscal year, including the year ending June thirtieth, nineteen hundred and eight, shall be paid at the end thereof by the Secretary of the Treasury *to the State* or Territory in which said reserve is situated, to be expended as the State or Territorial legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which the forest reserve is situated: *Provided*, That when any forest reserve is in more than one State or Territory or county the distributive share to each from the proceeds of said reserve shall be proportional to its area therein. (Act of May 23, 1908; 35 Stat., 260.)

Regulations of the Secretary of Agriculture concerning live stock and grazing, approved June 3, 1907, from The Use Book for that year:

REG. 39. Whenever any live-stock association whose membership includes a majority of the owners of any class of live stock using a national forest or portion thereof shall appoint a committee, an agreement on the part of which shall be binding upon the association, such committee, upon application to the Forester, may be recognized as an advisory board for the association, and shall then be entitled to receive notice of proposed action and have an opportunity to be heard by the local forest officer in reference to increase or decrease in the number of stock to be allowed for any year, the division of the range between different classes of stock or their owners, or the adoption of special rules to meet local conditions.

REG. 40. The Secretary of Agriculture will prescribe each year the number of stock to be allowed in each national forest. The period during which grazing will be allowed will be determined by the Forester. The supervisor will issue grazing permits in accordance with the instructions of the Forester.

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REG. 41. National forests in which grazing is allowed will be divided into districts approved by the Forester, who will determine the kind of stock to be grazed in each district. The supervisor will make such range divisions among applicants for the grazing permits as appear most equitable and for the best interest of the national forest and its users. When required for the protection of camping places, lakes and streams, roads and trails, etc., or of areas which are to be reforested, the supervisor may exclude stock from specified areas for such period of time as is necessary. Stock will be excluded from areas where they will destroy young growth or will prevent reproduction.

REG. 42. All persons must secure permits before grazing any stock in a national forest, except for the few head in actual use by prospectors, campers, and travelers, or which are used in connection with business of the national forests, and milch or work animals not exceeding a total of ten head owned and in use by bona fide settlers residing in or near a national forest, which require no permit.

REG. 43. Permits will be granted only for the exclusive use and benefit of the owners of the stock and will be forfeited if sold or transferred in any manner or for any consideration. Speculation in the use of grazing permits will not be allowed, and permits will be refused or canceled for intentional false statement of the number of stock owned.

REG. 44. The supervisor will set and give public notice of a date each year on or before which all applications for grazing permits must be presented to him. Permits may be refused to persons who do not file their applications within the required limit, unless satisfactory reasons are given.

REG. 45. Grazing applications must not cover more stock than the applicant desires to graze in the national forest, and must show the marks and brands of the stock, the portion of the national forest or district in which pasture is desired, and the grazing period.

REG. 46. Whenever there is a dispute between grazing applicants for the same area, the supervisor will notify them to appear before him at a stated time and place, to make a statement of their claims. After all evidence has been presented the supervisor will decide who shall be granted permits, and will forthwith notify each party to the dispute of his decision and his reasons therefor, which will be final unless written notice of appeal to the Forester is given him within ten days thereafter. Appeal will avail only in case of error.

REG. 47. Persons owning cattle and horses which regularly graze on ranges located along the boundary line and only partially included within a national forest may be granted permits for such portion of their stock as the circumstances appear to justify, but may be required to herd or so handle their stock as to prevent trespassing by that portion for which a permit is not granted, and to sign a supplemental agreement to that effect.

REG. 48. A reasonable fee will be charged for grazing all classes of live stock on national forests. The minimum prices will be as follows, depending upon the advantages and locality of the forest: From twenty (20) to thirty-five (35) cents per head for cattle and horses for the summer grazing season, and from thirty-five (35) to sixty (60) cents per head for the entire year; from ten (10) to fifteen (15) cents per head for hogs for the summer grazing season, and from twenty (20) to thirty (30) cents per head for the entire year; from five (5) to eight (8) cents per head for sheep for the summer grazing season, and from ten (10) to eighteen (18) cents per head for the entire year; and from six (6) to ten (10) cents per head for goats for the summer season, and from twelve (12) to twenty (20) cents per head for the entire year. An extra charge of two (2) cents per head will be made for sheep or goats which are allowed to enter the national forests for the purpose of lambing or kidding. All stock six (6) months old and over at the time of entering will be counted as grown stock.

REG. 49. All grazing fees are payable for each year strictly in advance. When an applicant for a grazing permit is notified by the supervisor that his application has been approved, he will remit the amount due for grazing fees to the fiscal agent, Forest Service, Washington, D. C., and upon return of the certificate to the supervisor a permit will be issued allowing the stock to enter the forest and remain during the period specified.

No permit will be issued until payment in full has been made.

Persons who fail to pay the grazing fee thirty days before the beginning of the grazing period must notify the supervisor and give satisfactory reasons, or they may be denied a grazing permit the following season.

REG. 50. The fees paid on account of a grazing permit which has been duly issued will not be refunded for nonuse of the permit, except when, in the opinion of the Forester, the applicant is prevented from using the range by circumstances over which he has no control.

REG. 51. When an owner who has a permit is ready to drive in his stock he must notify the supervisor, by mail or otherwise, stating the number to be driven in; he must also notify the supervisor when the stock is removed. If called upon to do so, he must provide for having his stock counted before entering the national forest, or at any time afterwards when the number of stock appears to be greater than the number covered by permit. Whenever any stock is removed before the expiration of the permit, it can be replaced by other stock to fill out the number covered by permit if the nearest forest officer is notified of such action at once. The owners of stock which is kept under herd upon the national forests will be furnished with cards for the identification of their herders by forest officers.

REG. 52. Each person or group of persons granted grazing permits will be required to repair all damage to roads or trails caused by the presence of their

stock in any portion of a national forest, and to build any new roads or trails found necessary for the proper handling of the stock. They will also be required to fence any spring or seep which is being damaged by tramping, and, if necessary, pipe the water into troughs for watering stock. Such troughs must be open for public use.

REG. 53. Sheep must not be bedded more than six nights in succession in the same place, except when bedding bands of ewes during lambing season, and must not be bedded within three hundred yards of any running stream or living spring, except in rare cases where this restriction is clearly impracticable.

REG. 54. The carcasses of all animals which die in the close vicinity of any water must be removed immediately and buried or burned.

REG. 55. All stock grazed under permit must be salted regularly at such places as are designated by the forest officers, and the owners of stock must notify the forest officers when any such order has been complied with.

REG. 56. All persons holding grazing permits are required to extinguish camp fires started by them or their employees before leaving the vicinity thereof, and to aid in extinguishing all forest fires within the division or district of the national forest in which they are grazing stock.

REG. 57. Whenever an injury is being done the national forest by reason of improper handling of the stock, the owner must comply with the orders of the the forest officers or the permit will be canceled and the stock removed. The grazing of stock upon a closed area or upon range not allowed by the permit will constitute a trespass, and the owner of the stock will be held liable for damages.

REG. 58. Persons who own, or who have leased from the owners, land within any national forest which they desire to use for grazing purposes will be allowed to cross the forest lands with their stock to reach such private holdings, but when the stock will

be grazed on national forest land en route, they must make application to the supervisor for a permit to cross. The application must be accompanied by a personal certificate of title showing the description and ownership of the land, and, if leased from an owner, a copy of the lease, and must state the number of stock to be taken in, the length of time required to cross the national forest land, the route over which the stock is to be driven, the period during which the stock will remain upon the private land, and how much stock the owned or leased land will pasture during the period specified.

When the private land is unfenced a special clause may be inserted in the agreement waiving the right to the exclusive use of the private land and allowing it to remain open to other stock grazed under permit, in consideration of which a permit will be issued free of charge allowing the stock to be grazed at large upon the national forest, but the grazing fee must be paid on all stock over the estimated grazing capacity of the private lands.

When any such application is made to the supervisor he will examine it, and if he finds it reasonable and just and made in good faith for the purpose of utilizing such private holdings only, he will approve it and forward it, accompanied by all papers supporting it, to the Forester. After the Forester approves the application, due notice will be given the supervisor, who may then issue a permit allowing the stock to enter.

REG. 59. Persons wishing to drive stock across any part of a national forest must make application to the supervisor or other forest officers, either by letter or on the regular grazing-application form, for a permit to graze stock en route, and must have a permit from the supervisor, or such other forest officer as he may designate, before entering the national forest. The application must state the number of stock to be driven, the date of starting, and period required for passage. Grazing must be confined to the limits and along the route designated by the forest officers, and

will only be allowed for the period actually necessary for stock to cross the national forest.

Permits will not be required for driving small bands of stock along public highways, or when the stock will not be grazed upon national-forest lands en route.

REG. 60. All stock which is grazed under permit in or allowed to cross any national forest will be required to conform to the quarantine regulations of the Bureau of Animal Industry, U. S. Department of Agriculture, and all live-stock laws of the State or Territory in which the national forest is located.

REG. 61. The construction and maintenance of drift or division fences will be allowed when they will be a benefit to the national forest or its administration and will not interfere with the use of the range by all who are equitably entitled to share in the grazing.

REG. 62. The construction of corrals upon national forest lands covering an area of not more than one (1) acre, to be used in connection with the proper handling of live stock which is permitted to graze thereon, will be allowed without charge wherever in the judgment of the forest officers such corrals are necessary and will not be detrimental to the proper care of the forest. The construction of inclosures upon national forest lands containing not more than three hundred and twenty (320) acres will be allowed, when such inclosures are necessary for the proper handling of the stock allowed to graze upon the forests, under a special permit, for which an annual rental of not less than four (4) cents per acre will be charged in addition to the regular grazing fee. The fencing up of watering places for the purpose of controlling adjoining range will not be allowed, and in fencing pastures provision must be made to allow free access to water by any stock grazing under permit. The application must be made on Form 832 in the same manner as for other special uses.

REG. 63. All forest officers will cooperate with State or Territorial officials, so far as they can without undue interference with their regular forest work,

to enforce local laws for the protection of game and stock. When authorized to do so by the proper State officers, they will, without additional pay, except bounties and fees offered by associations and States, act as game wardens with full power to enforce the local laws. If not so authorized, they will promptly inform the State officials of all violations discovered.

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LIGHT *v.* UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

No. 360. Argued February 27, 28, 1911.—Decided May 1, 1911.

United States v. *Grimaud, ante,* p. 506, followed to effect that Congress may authorize an executive officer to make rules and regulations as to the use, occupancy and preservation of forests and that such authority so granted is not unconstitutional as a delegation of legislative power.

At common law the owner was responsible for damage done by his live stock on land of third parties, but the United States has tacitly suffered its public domain to be used for cattle so long as such tacit consent was not cancelled, but no vested rights have been conferred on any person, nor has the United States been deprived of the power of recalling such implied license.

While the full scope of § 3, Art. IV, of the Constitution has never been definitely settled it is primarily a grant of power to the United States of control over its property, *Kansas* v. *Colorado,* 206 U. S. 89; this control is exercised by Congress to the same extent that an individual can control his property.

It is for Congress and not for the courts to determine how the public lands shall be administered.

Congress has power to set apart portions of the public domain and establish them as forest reserves and to prohibit the grazing of cattle thereon or to permit it subject to rules and regulations.

Fence laws may condone trespasses by straying cattle where the laws have not been complied with, but they do not authorize wanton or willful trespass, nor do they afford immunity to those willfully turning cattle loose under circumstances showing that they were intended to graze upon the lands of another.

Where cattle are turned loose under circumstances showing that the owner expects and intends that they shall go upon a reserve to graze thereon, for which he has no permit and he declines to apply for one, and threatens to resist efforts to have the cattle removed and contends that he has a right to have his cattle go on the reservation, equity has jurisdiction, and such owner can be enjoined at the instance of the Government, whether the land has been fenced or not.

Quære, and not decided, whether the United States is required to fence property under laws of the State in which the property is located.

This court will, so far as it can, decide cases before it without reference to questions arising under the Federal Constitution. *Siler* v. *Louisville & Nashville R. R. Co.*, 213 U. S. 175.

THE Holy Cross Forest Reserve was established under the provisions of the act of March 3, 1891. By that and subsequent statutes the Secretary of Agriculture was authorized to make provisions for the protection against destruction by fire and depredations of the public forest and forest reservations and "to make such rules and regulations and establish such service as would insure the objects of such reservation, namely, to regulate their occupancy and use, and to preserve the forests thereon from destruction." 26 Stat. 1103, c. 563; 30 Stat. 35, c. 2; act of Congress February 1, 1905; 7 Fed. Stat. Ann. 310, 312, and Supp. for 1909, p. 663. In pursuance of these statutes regulations were adopted establishing grazing districts on which only a limited number of cattle were allowed. The regulations provided that a few head of cattle of prospectors, campers and not more than ten

belonging to a settler residing near the forest might be admitted without permit, but saving these exceptions the general rule was that "all persons must secure permits before grazing any stock in a national forest."

On April 7, 1908, the United States, through the district attorney, filed a bill in the Circuit Court for the District of Colorado reciting the matters above outlined, and alleging that the defendant Fred Light owned a herd of about 500 cattle and a ranch of 540 acres, located two and a half miles to the east and five miles to the north of the reservation. This herd was turned out to range during the spring and summer, and the ranch then used as a place on which to raise hay for their sustenance.

That between the ranch and the reservation, was other public and unoccupied land of the United States; but, owing to the fact that only a limited number of cattle were allowed on the reservation, the grazing there was better than on this public land. For this reason, and because of the superior water facilities and the tendency of the cattle to follow the trails and stream leading from the ranch to the reservation, they naturally went direct to the reservation. The bill charged that the defendant when turning them loose knew and expected that they would go upon the reservation, and took no action to prevent them from trespassing. That by thus knowingly and wrongfully permitting them to enter on the reservation he intentionally caused his cattle to make a trespass, in breach of the United States property and administrative rights, and has openly and privately stated his purpose to disregard the regulations, and without permit to allow and, in the manner stated, to cause his cattle to enter, feed and graze thereon.

The bill prayed for an injunction. The defendant's general demurrer was overruled.

His answer denied that the topography of the country around his ranch or the water and grazing conditions were

such as to cause his cattle to go on the reservation; he denied that many of them did go thereon, though admitting that some had grazed on the reservation. He admitted that he had liberated his cattle without having secured or intending to apply for a permit, but denied that he willfully or intentionally caused them to go on the reservation, submitting that he was not required to obtain any such permit. He admits that it is his intention hereafter, as heretofore, to turn his cattle out on the unreserved public land of the United States adjoining his ranch to the northeast thereof, without securing or applying for any permit for the cattle to graze upon the so-called Holy Cross Reserve; denies that any damage will be done if they do go upon the reserve; and contends that, if because of their straying proclivities, they shall go on the reserve, the complainant is without remedy against the defendant at law or in equity so long as complainant fails to fence the reserve as required by the laws of Colorado. He claims the benefit of the Colorado statute requiring the owner of land to erect and maintain a fence of given height and strength, in default of which the owner is not entitled to recover for damage occasioned by cattle or other animals going thereon.

Evidence was taken, and after hearing, the Circuit Court found for the Government and entered a decree enjoining the defendant from in any manner causing, or permitting, his stock to go, stray upon or remain within the said forest or any portion thereof.

The defendant appealed and assigned that the decree against him was erroneous; that the public lands are held in trust for the people of the several States, and the proclamation creating the reserve without the consent of the State of Colorado is contrary to and in violation of said trust; that the decree is void because it in effect holds that the United States is exempt from the municipal laws of the State of Colorado relating to fences; that the statute

conferring upon the said Secretary of Agriculture the power to make rules and regulations was an unconstitutional delegation of authority to him and the rules and regulations therefore void; and that the rules mentioned in the bill are unreasonable, do not tend to insure the object of forest reservation and constitute an unconstitutional interference by the Government of the United States with fence and other statutes of the State of Colorado, enacted through the exercise of the police power of the State.

Mr. James H. Teller, with whom *Mr. John T. Barnett*, Attorney General of Colorado, *Mr. Henry M. Teller*, *Mr. C. S. Thomas*, *Mr. E. C. Stimson*, *Mr. Milton Smith*, *Mr. H. A. Hicks* and *Mr. Ralph McCrillis* were on the brief, for appellant:

The jurisdiction of a State extends over all the territory within its boundaries. *New York* v. *Miln*, 11 Pet. 139; *Pennoyer* v. *Neff*, 95 U. S. 714; *Van Brocklin* v. *Anderson*, 117 U. S. 158; *Kansas* v. *Colorado*, 206 U. S. 93.

One who asserts the existence of any exemption from this jurisdiction must point out the act of cession, or the constitutional provision from which it arises. The Government holds title to public lands, not as a sovereign, but as a proprietor merely. This, of course, applies only to public lands properly so called, and not to lands used for governmental purposes. *Pollard's Lessee* v. *Hagan*, 3 How. 212; *Woodruff* v. *N. Bloomfield G. M. Co.*, 18 Fed. Rep. 772; *People* v. *Scherer*, 30 California, 658; *Camp* v. *Smith*, 2 Minnesota, 131; *Hendricks* v. *Johnson*, 6 Porter (Ala.), 472; *United States* v. *Bridge Co.*, 6 McLean, 517; *United States* v. *Chicago*, 7 How. 185; *United States* v. *Cornell*, 2 Mason, 60.

Sovereignty is not to be taken away by implication. *People* v. *Godfrey*, 17 Johns. 225. Section 8 of Article I of the Constitution, which gives the United States ex-

clusive jurisdiction over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, means that these are to be purchased with the consent of the legislature. Story on Const., 5th ed., § 1227; *Ft. Leavenworth Ry. Co.* v. *Lowe*, 114 U. S. 525; *Mobile* v. *Eslava*, 16 Pet. 277; *People* v. *Godfrey*, 17 Johns. 225.

A forest reserve, however beneficial, is not in fact an instrument of government and necessary to the exercise of national sovereignty.

Even in those cases in which there is a cession of jurisdiction by the State subsequent to the adoption of a fence law, the law prevails on such lands until repealed by the General Government. *C., R. I. & P. Ry. Co.* v. *McGlinn*, 114 U. S. 542.

If the fence law would thus apply on territory of which the jurisdiction had been ceded by a State, it certainly is not ousted by the mere act of reserving public lands for forestry purposes.

The ownership by the General Government of land within a State does not carry with it general rights of sovereignty over such lands.

If the Federal Government has jurisdiction over these reservations to the extent necessary to support this decree, the State is deprived of its police power over a large portion of its territory. The police power of a State extends over all of its territory and is exclusive. *Prigg* v. *Commonwealth*, 16 Pet. 639; *The Slaughter House Cases*, 16 Wall. 63; *In re Rahrer*, 140 U. S. 554; *United States* v. *Knight*, 156 U. S. 11; *L'Hote* v. *New Orleans*, 177 U. S. 597.

The court bases the right to prevent the fencing of public lands upon the fact that such fencing would retard the settlement of the lands, which is the purpose for which the Government holds them as a trustee.

The result of this decree, as before stated, is, that

state laws passed in the exercise of the police power are not operative on the public domain. See *Shannon* v. *United States*, 88 C. C. A. 52. That case, however, is not authority to the effect claimed.

Fences and the trespasses of live stock is a proper subject of legislation under the police power of the State. *Bacon* v. *Walker*, 204 U. S. 317; *Rideout* v. *Knox*, 148 Massachusetts, 368. This decree is contrary not only to the statutes of the State concerning fencing and live stock, but to the law as laid down by the state Supreme Court prior to the adoption of these laws. *Morris* v. *Fraker*, 5 Colorado, 425; *Richards* v. *Sanderson*, 39 Colorado, 278; *Buford* v. *Houtz*, 133 U. S. 320.

In 1885 a fence law was enacted, but it did no more than express in statutory form what was already the law of the State. See Session Laws, 1885, p. 220, §§ 2987 *et seq.*, Rev. Stat. Colo., 1908. The gist of the statute is that damages from trespass by animals are not recoverable unless the premises on which such trespass occurs are enclosed by a lawful fence as therein prescribed.

To limit the jurisdiction of States containing forest reserves is to deny to them that equality with other States to which they are entitled. *Escanaba Co.* v. *Chicago*, 107 U. S. 678; *Ward* v. *Race Horse*, 163 U. S. 504. This court will take judicial notice of the proclamations of the President which have set aside as forest reserves within the State of Colorado an area of 21,309 square miles, more than one-fifth of the area of the State; but see *Kansas* v. *Colorado*, to effect that the National Government cannot enter the territory of one of the newer States and legislate in respect to improving by irrigation or otherwise lands within their borders, unless it has the same power in the older States.

An act of Congress cannot restrict the sovereignty of a State except under express constitutional authority therefor. *Withers* v. *Buckley*, 20 How. 84. The equality

of the States under the Federal Constitution is fundamental—a part of the very structure of our system of government. It is guaranteed by statute and exists without statute. *Ward* v. *Race Horse, supra.*

The authority of Congress to dispose of and protect public lands is so limited as not to deprive one State of an attribute of sovereignty which is conceded to other States.

The lands described in the President's proclamation as constituting the Holy Cross Forest Reserve have not been legally set apart as permanent disposition thereof for the purposes in said proclamation mentioned.

The Government holds public land in trust for the people, to be disposed of so as to promote the settlement and ultimate prosperity of the States in which they are situated. This contradicts the withdrawal of lands for such purposes. *Newhall* v. *Sanger*, 92 U. S. 761; *Bardon* v. *N. P. R. R. Co.*, 145 U. S. 535; *Dobbins* v. *Commissioners*, 17 Pet. 435; *Weber* v. *Commonwealth*, 18 Wall. 57; *United States* v. *Beebee*, 127 U. S. 348; *Shively* v. *Bowlby*, 132 U. S. 49; *United States* v. *Trinidad Coal Co.*, 137 U. S. 160; *Pollard's Lessee* v. *Hogan, supra.*

While national authority to reclaim arid lands may be sustained, on the broad ground that their reclamation is an aid in disposing of them, reservations, on the contrary, are in effect an abandonment of the purpose of disposing of the lands included therein. Although the power to establish these reserves may be highly desirable, and may be more effectually exercised by the Federal Government than by the States, that affords no ground for asserting the existence of the power.

The system of national forest reserves violates the trust concerning public land, and denies to the States in which such reserves are established the equality with other States to which they are entitled. Report of House Judiciary Committee, 60th Congress, 1541, denying the right of the

Government to purchase land for forest reserves; and see 30 Stat. 34.

This subject is not within the scope of the general welfare clause of the Constitution. Story on the Const., §§ 907, 908; Tucker's Const. of United States, § 222. If the power does exist it cannot be exercised without the consent of the States directly affected.

Mr. Ernest Knaebel for the United States:

Appellant has no standing to attack the reservation or the forest-reserve policy. He does not claim any right or interest in any of the lands reserved.

Before the reservation he doubtless enjoyed a license of pasturage there. This was a mere privilege, existing, which the Government could take away. *Shannon* v. *United States*, 160 Fed. Rep. 870, 873; *Frisbie* v. *Whitney*, 9 Wall. 187; *Yosemite Valley Case*, 15 Wall. 77. The constitutionality of the reservation is attacked solely upon the ground of its supposed invasion of the rights and prerogatives of the State. But the State is not here objecting, and its supposed injury is no concern of the appellant. *Bacon* v. *Walker*, 204 U. S. 311, 315; *Hatch* v. *Reardon*, 204 U. S. 152, 160; *Budzisz* v. *Illinois Steel Co.*, 170 U. S. 41; *Supervisors* v. *Stanley*, 105 U. S. 305, 311; *Clark* v. *Kansas City*, 176 U. S. 114, 118; *Lampasas* v. *Bell*, 180 U. S. 276, 283, 284; *Cronin* v. *Adams*, 192 U. S. 108, 114.

The state fence law was not intended to apply to the United States. It confers no right whatever upon the cattle owner. It gives him no permission to place his cattle upon the land of another, whether fenced or unfenced. It merely vouchsafes him a reasonable assurance of immunity from what, under the common law, would be legal consequences of their trespassing, provided this

shall have resulted from their straying and not directly from any act and purpose of his own. *Buford* v. *Houtz*, 133 U. S. 320; *Lazarus* v. *Phelps*, 152 U. S. 81; *Sabine &c. Ry. Co.* v. *Johnson*, 65 Texas, 389, 393; *Delaney* v. *Errickson*, 11 Nebraska, 533, 534; *Otis* v. *Morgan*, 61 Iowa, 712; *Moore* v. *Cannon*, 24 Montana, 316, 324; *St. Louis Cattle Co.* v. *Vaught*, 1 Tex. Civ. App. 388; *Larkin* v. *Taylor*, 5 Kansas, 433, 446; *Union Pacific Ry. Co.* v. *Rollins*, 5 Kansas, 167, 176.

It has been held by the highest court in Colorado that the willful and deliberate driving of cattle upon the premises of another is actionable. *Nuckolls* v. *Gaut*, 12 Colorado, 361; *Norton* v. *Young*, 6 Colo. App. 187; *Fugate* v. *Smith*, 4 Colorado, 201; *Sweetman* v. *Cooper*, 20 Colorado, 5; *Richards* v. *Sanderson*, 39 Colorado, 278.

Even if the United States as a property owner is subject to the same control by the State as individuals are, to the mind of the state legislature the character and functions of the Nation are not lost in the general conception of ownership.

The regulations were a valid exercise of constitutional power. It was the duty of the individual to obey them and of the courts to enforce them without regard to state laws. The State has no beneficial right whatsoever in the land; there is neither community of ownership, nor relation of trustee and *cestui que trust*. While these lands are held by the United States in trust, the people of the United States—not particular States nor the people of particular States—are the beneficiaries. *United States* v. *Trinidad Coal Co.*, 137 U. S. 160; *United States* v. *Gratiot*, 1 McLean, 454; *S. C.*, 26 Fed. Cas. 15,249; *Turner* v. *American Baptist Union*, 5 McLean, 344; *Van Brocklin* v. *Tennessee*, 117 U. S. 151, 159; Treat's National Land System (N. Y., Treat & Co., 1910). Like all other States carved out of the public domain, with very few exceptions, 117 U. S. 160, Colorado solemnly agreed never to tax or

lay claim to any of the lands of the United States. See 18 Stat. 474, § 5; 1 Mills' Ann. Stat. Colo., 111; 19 Stat. 665.

The ordinance, however, was not necessary to protect the United States from all claim of state interest in the lands. *Hartman* v. *Tresise*, 36 Colorado, 146. The Constitution by Art. IV, § 3, cl. 2, provides that Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States, and the power being given without limitation, is absolute and exclusive of all state interference. *Wilcox* v. *Jackson*, 13 Pet. 498, 517; *United States* v. *Gratiot*, 14 Pet. 526; *Jourdan* v. *Barrett*, 4 How. 168, 184; *Irvine* v. *Marshall*, 20 How. 558; *Gibson* v. *Chouteau*, 13 Wall. 92, 99; *McCarthy* v. *Mann*, 19 Wall. 20; *United States* v. *Insley*, 130 U. S. 263; *Redfield* v. *Parks*, 132 U. S. 239; *Camfield* v. *United States*, 167 U. S. 518, 525; *Shively* v. *Bowlby*, 152 U. S. 1, 50, 52; *Mann* v. *Tacoma Land Co.*, 153 U. S. 273, 283; *United States* v. *Rio Grande Dam Co.*, 174 U. S. 690, 703; *Gutierres* v. *Land & Irrigation Co.*, 188 U. S. 545, 555; *Kansas* v. *Colorado*, 206 U. S. 46, 89; *United States* v. *Cleveland & Colorado Cattle Co.*, 33 Fed. Rep. 323; and see also *Shannon* v. *United States*, 160 Fed. Rep. 870.

See also decisions of other courts to the same effect. *United States* v. *Gratiot*, 1 McLean, 454; *S. C.*, 26 Fed. Cas. 15,249; *Turner* v. *Am. Baptist Union* (1852), 5 McLean, 344; *S. C.*, 24 Fed. Cas. 14,251; *Seymour* v. *Sanders*, 3 Dillon, 437; *S. C.*, 21 Fed. Cas. 12,690; *Union Mill & M. Co.* v. *Ferris*, 2 Sawyer, 176; *United States* v. *Cleveland Cattle Co.*, 33 Fed. Rep. 323, 330; *Carroll* v. *Price*, 81 Fed. Rep. 137; *Heckman* v. *Sutter*, 119 Fed. Rep. 83; *S. C.*, 128 Fed. Rep. 393; *Shannon* v. *United States*, 160 Fed. Rep. 870; *People* v. *Folsom*, 5 California, 373, 378; *Doran* v. *Central Pacific*, 24 California, 246, 257; *Miller* v. *Little*, 47 California, 348; *Vansickle* v. *Haines*, 7 Nevada, 249, 262;

Fee v. *Brown*, 17 Colorado, 510, 519; *S. C.*, 162 U. S. 602; *Waters* v. *Bush*, 42 Iowa, 255; *David* v. *Rackabaugh*, 32 Iowa, 540; *Sorrels* v. *Self*, 43 Arkansas, 451, 452.

The real object of the clause was to make plain beyond a doubt that in respect of all the Federal property Congress is omnipotent. *Fee* v. *Brown*, 17 Colorado, 510, 519; *Wilcox* v. *Jackson*, *supra*.

As to the meaning of the words "dispose of" and what is within the power of Congress as to disposition other than sale, see *United States* v. *Gratiot*, 14 Pet. 526; 20 Stat. 88; 26 Stat. 1093; *Northern Pacific* v. *Lewis*, 162 U. S. 366; *United States* v. *United Verde Copper Co.*, 196 U. S. 207; *Kohl* v. *United States*, 91 U. S. 367; *Shively* v. *Bowlby*, 152 U. S. 1, 26; *Withers* v. *Buckley*, 20 How. 84; *United States* v. *Bridge Company*, 6 McLean, 517; *United States* v. *Chicago*, 7 How. 185.

The Nation cannot be subjected in its rights or remedies to the control of state laws.

The conservation and uses contemplated by the forest policy are natural, reasonable, and beneficent to the people of the entire country. Lands so held and administered are among the inviolable instrumentalities of the Government. *Van Brocklin* v. *Tennessee*, 117 U. S. 177.

MR. JUSTICE LAMAR, after making the foregoing statement, delivered the opinion of the court.

The defendant was enjoined from pasturing his cattle on the Holy Cross Forest Reserve, because he had refused to comply with the regulations adopted by the Secretary of Agriculture, under the authority conferred by the act of June 4, 1897, (30 Stat. 35), to make rules and regulations as to the use, occupancy and preservation of forests. The validity of the rule is attacked on the ground that Congress could not delegate to the Secretary legislative power. We need not discuss that question in view of the opinion in *United States* v. *Grimaud*, just decided, *ante*, p. 506.

The bill alleged, and there was evidence to support the finding, that the defendant, with the expectation and intention that they would do so, turned his cattle out at a time and place which made it certain that they would leave the open public lands and go at once to the Reserve, where there was good water and fine pasturage. When notified to remove the cattle, he declined to do so and threatened to resist if they should be driven off by a forest officer. He justified this position on the ground that the statute of Colorado provided that a landowner could not recover damages for trespass by animals unless the property was enclosed with a fence of designated size and material. Regardless of any conflict in the testimony, the defendant claims that unless the Government put a fence around the Reserve it had no remedy, either at law or in equity, nor could he be required to prevent his cattle straying upon the Reserve from the open public land on which he had a right to turn them loose.

At common law the owner was required to confine his live stock, or else was held liable for any damage done by them upon the land of third persons. That law was not adapted to the situation of those States where there were great plains and vast tracts of unenclosed land, suitable for pasture. And so, without passing a statute, or taking any affirmative action on the subject, the United States suffered its public domain to be used for such purposes. There thus grew up a sort of implied license that these lands, thus left open, might be used so long as the Government did not cancel its tacit consent. *Buford* v. *Houtz*, 133 U. S. 326. Its failure to object, however, did not confer any vested right on the complainant, nor did it deprive the United States of the power of recalling any implied license under which the land had been used for private purposes. *Steele* v. *United States*, 113 U. S. 130; *Wilcox* v. *Jackson*, 13 Pet. 513.

It is contended, however, that Congress cannot constitu-

tionally withdraw large bodies of land from settlement without the consent of the State where it is located; and it is then argued that the act of 1891 providing for the establishment of reservations was void, so that what is nominally a Reserve is, in law, to be treated as open and unenclosed land, as to which there still exists the implied license that it may be used for grazing purposes. But "the Nation is an owner, and has made Congress the principal agent to dispose of its property." . . . "Congress is the body to which is given the power to determine the conditions upon which the public lands shall be disposed of." *Butte City Water Co.* v. *Baker*, 196 U. S. 126. "The Government has with respect to its own land the rights of an ordinary proprietor to maintain its possession and prosecute trespassers. It may deal with such lands precisely as an ordinary individual may deal with his farming property. It may sell or withhold them from sale." *Camfield* v. *United States*, 167 U. S. 524. And if it may withhold from sale and settlement it may also as an owner object to its property being used for grazing purposes, for "the Government is charged with the duty and clothed with the power to protect the public domain from trespass and unlawful appropriation." *United States* v. *Beebee*, 127 U. S. 342.

The United States can prohibit absolutely or fix the terms on which its property may be used. As it can withhold or reserve the land it can do so indefinitely, *Stearns* v. *Minnesota*, 179 U. S. 243. It is true that the "United States do not and cannot hold property as a monarch may for private or personal purposes." *Van Brocklin* v. *Tennessee*, 117 U. S. 158. But that does not lead to the conclusion that it is without the rights incident to ownership, for the Constitution declares, § 3, Art. IV, that "Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or the property belonging to the United States." "The full scope of this

paragraph has never been definitely settled. Primarily, at least, it is a grant of power to the United States of control over its property." *Kansas* v. *Colorado*, 206 U. S. 89.

"All the public lands of the nation are held in trust for the people of the whole country." *United States* v. *Trinidad Coal Co.*, 137 U. S. 160. And it is not for the courts to say how that trust shall be administered. That is for Congress to determine. The courts cannot compel it to set aside the lands for settlement; or to suffer them to be used for agricultural or grazing purposes; nor interfere when, in the exercise of its discretion, Congress establishes a forest reserve for what it decides to be national and public purposes. In the same way and in the exercise of the same trust it may disestablish a reserve, and devote the property to some other national and public purpose. These are rights incident to proprietorship, to say nothing of the power of the United States as a sovereign over the property belonging to it. Even a private owner would be entitled to protection against willful trespasses, and statutes providing that damage done by animals cannot be recovered, unless the land had been enclosed with a fence of the size and material required, do not give permission to the owner of cattle to use his neighbor's land as a pasture. They are intended to condone trespasses by straying cattle; they have no application to cases where they are driven upon unfenced land in order that they may feed there. *Lazarus* v. *Phelps*, 152 U. S. 81; *Monroe* v. *Cannon*, 24 Montana, 316; *St. Louis Cattle Co.* v. *Vaught*, 1 Tex. App. 388; *The Union Pacific* v. *Rollins*, 5 Kansas, 165, 176.

Fence laws do not authorize wanton and willful trespass, nor do they afford immunity to those who, in disregard of property rights, turn loose their cattle under circumstances showing that they were intended to graze upon the lands of another.

This the defendant did, under circumstances equivalent to driving his cattle upon the forest reserve. He could

have obtained a permit for reasonable pasturage. He not only declined to apply for such license, but there is evidence that he threatened to resist efforts to have his cattle removed from the Reserve, and in his answer he declares that he will continue to turn out his cattle, and contends that if they go upon the Reserve the Government has no remedy at law or in equity. This claim answers itself.

It appears that the defendant turned out his cattle under circumstances which showed that he expected and intended that they would go upon the Reserve to graze thereon. Under the facts the court properly granted an injunction. The judgment was right on the merits, wholly regardless of the question as to whether the Government had enclosed its property.

This makes it unnecessary to consider how far the United States is required to fence its property, or the other constitutional questions involved. For, as said in *Siler* v. *Louisville & Nashville R. R.*, 213 U. S. 175 "where cases in this court can be decided without reference to questions arising under the Federal Constitution that course is usually pursued, and is not departed from without important reasons." The decree is therefore

Affirmed.